

48192

TEXTRON

Textron Inc.

40 Westminster Street
Providence, R.I. 02903
401/421-2800

March 5, 1990

Overnight Courier

Ruth Mancos

Emergency Support Section

U.S. Environmental Protection Agency, 5HS-11

230 South Dearborn Street

Chicago, Illinois 60604

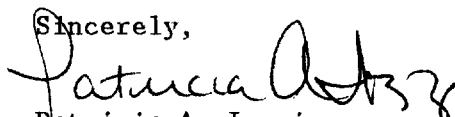
Re: Conservation Chemical of Illinois

Dear Ms. Mancos:

Enclosed is Camcar Textron's response to U.S. EPA's Request for Information concerning the above-referenced matter.

Should you have any questions concerning this matter, please do not hesitate to call me directly at (401) 457-2215.

Sincerely,



Patricia A. Iezzi
Environmental Specialist

CONSERVATION CHEMICAL OF ILLINOIS

RESPONSES TO U.S.EPA REQUEST FOR INFORMATION

1. Identify all persons consulted in the preparation of the answers to these Information Requests.

Curt Rosing
Manager of Corporate Environmental Compliance
CAMCAR
500 18th Avenue
Rockford, IL 61104-5181

Kay Dunn
Camcar
500 18th Avenue
Rockford, IL 61104-5181

Patricia A. Iezzi
Environmental Specialist
Textron Inc.
40 Westminster Street
Providence, Rhode Island 02903

2. Identify all documents consulted, examined or referred to in the preparation of the answers to these Requests and provide copies of all such documents.

In response to the above request, Camcar reviewed records which describe accounts payable to Camcar's vendors during the years 1965 through 1980 by Camcar facilities located in Belvidere and Rockford, Illinois. Attached in Exhibit 1 are summaries which describe these documents. Camcar also reviewed documents that summarize information on manifests relating to shipments of hazardous and special waste since 1981. Camcar objects to the production of all documents that were reviewed or referred to but deemed to be irrelevant to this matter because production of these documents would be overly burdensome, unreasonably expensive and would not lead to the production of relevant information. Camcar has, however, provided in Exhibit 2 all the documents discovered to date by Camcar which relate to Camcar transactions with Conservation Chemical. Also included in Exhibit 2 are copies of documents collected by the EPA during its investigation of this matter. Should Camcar locate other documents responsive to this request in the future, Camcar will supplement this response.

3. If you have reason to believe that there may be persons able to provide a more detailed or complete response to any Information Request or who may be able to provide additional responsive documents, identify such persons.

Individuals employed by the U.S. Environmental Protection Agency and other potentially responsible parties may be able to provide more detailed or complete responses to these requests. Camcar will continue its search to determine if there are other individuals employed or which were employed by Camcar who may have information responsive to this request.

4. List the EPA Identification Numbers of the Respondent.

The EPA Identification Number for the facility below is ILD001787118.

Raycarl Products
500 18th Avenue
Rockford, IL 61104-5181

5. Identify the acts or omissions of any persons, other than your employees, contractors or agents, that may have caused the release or threat of release of hazardous substances, pollutants, or contaminants and damages resulting therefrom.

At this time, Camcar is not aware of any such acts or omissions.

6. Identify all persons having knowledge or information about the generation, transportation, treatment, disposal or other handling of hazardous substances, including but not limited to, AROCLOR 1016, AROCLOR 1221, AROCLOR 1232, AROCLOR 1242, AROCLOR 1248, AROCLOR 1254, AROCLOR 1260, or any other polychlorinated biphenyl (PCB) by you, your contractors, or by prior owners and/operators.

Camcar is continuing its search for information relevant to this request and will supplement its response if such information is located in the future. Information which may be deemed relevant to this request can be found in a letter dated April 24, 1971 between Conservation Chemical and Camcar, a copy of which is enclosed in Exhibit 2.

7. Did you ever use, purchase, store, treat, dispose, transport or otherwise handle any hazardous substances or materials, including but not limited to AROCLOR 1016, AROCLOR 1221, AROCLOR 1232, AROCLOR 1242, AROCLOR 1248, AROCLOR 1254, AROCLOR 1260 or any other (PCB)? If the answer to the preceding question is anything but an unqualified "no", identify:

(a) The chemical composition, characteristics, physical state (e.g. solid, liquid) of each hazardous substance;

(b) Who supplied you with such hazardous substances;

(c) How such hazardous substances were used, purchased, generated, stored, treated, transported, disposed or otherwise handled by you;

(d) When such hazardous substances were used, purchased, generated, stored, treated, transported, disposed or otherwise handled by you;

(e) Where such hazardous substances were used, purchased, generated, stored, treated, transported, disposed or otherwise handled by you; and

(f) The quantity of such hazardous substances used, purchased, generated, stored, treated, transported, disposed or otherwise handled by you.

Camcar is continuing its search for information relevant to this request and will supplement its response if such information is located in the future.

8. Identify all liability insurance policies held by Respondent from 1970 to 1985. In identifying such policies, state the name and address of each insurer and of the insured, the amount of coverage under each policy, the commencement and expiration dates for each policy, whether or not the policy contains a "pollution exclusion" clause, and whether the policy covers or excludes sudden, nonsudden or both types of accidents. In lieu of providing this information, you may submit complete copies of all relevant insurance policies.

Camcar objects to Information Request No. 8 as being overly burdensome and prohibitively time consuming. Moreover, insurance policies concerning Camcar are considered confidential and privileged. Without waiving or limiting its objections, Camcar responds that from 1970 to the present, it was covered by insurance policies, both primary and excess protection, which included standard Comprehensive General Liability (CGL) coverage with companies including Aetna Casualty and Surety Company, CIGNA and INA. The CGL coverage for some years may have contained "pollution exclusion" language. Litigation over whether any, or all, of such policies cover or exclude sudden, non-sudden or both types of accidents has been commenced on Camcar's behalf. This litigation continues, thus Camcar cannot state at this time whether these policies will provide coverage.

9. Provide copies of all income tax returns sent to the Federal Internal Revenue Service in the last three years.

Camcar objects to Information Request No. 9 because it believes income tax returns are irrelevant to this matter. Moreover, this request is overly burdensome in that income tax returns for Camcar are not readily available to the respondents of this request. Without waiving this objection, Camcar states that if EPA, by this request, is concerned whether Camcar has sufficient assets to cover any liability it might have at the Conservation Chemical of Illinois site, Camcar encloses at Exhibit 3 the most current annual report of Textron Inc., the parent corporation of Camcar, which sets forth the corporation's financial position.

10. If Respondent is a Corporation, respond to the following requests:

(a) Provide a copy of the Articles of Incorporation and By-laws of the Respondent.

See Exhibits 4 and 5.

(b) Provide Respondent's financial statements for the past five fiscal years, including, but not limited to those filed with the Internal Revenue Service.

Camcar objects to this request on the basis that it is overly burdensome. Without waiving this objection, Camcar refers EPA to the response of Request No. 9 above.

(c) Identify all of Respondent's current assets and liabilities and the person who currently own or are responsible for such assets and liabilities.

Camcar objects to this request on the basis that it is overly burdensome. Without waiving this objection, Camcar refers EPA to the response of Request No. 9 above.

11. If Respondent is a Partnership, provide copies of the Partnership Agreement.

Not applicable

12. If Respondent is a Trust, provide all relevant agreements and documents to support this claim.

Not applicable

CONSERVA/FKEC.DLY

Accounts Payable Records

Camcar: All Rockford & Belvidere Facilities
(Excluding Sems Products)

<u>Year</u>	<u>Media</u>	<u>Report Type</u>	<u>Report Description</u>
1965	Microfilm	Accounts Payable Distribution	Weekly Printout of Expenditures for Each Department
1966	Microfilm	Accounts Payable Distribution	Weekly Printout of Expenditures for each Department
	Microfilm	Accounts Payable Disbursement Reg.	Weekly Printout of Expenditures Summarized by Vendor
1967	Microfilm	General Disbursement Summary	Weekly Printout of Expenditures Summarized by Vendor
	Paper	Annual Vendor Summary	Annual Printout of Expenditures Summarized by Vendor
1968	Microfilm	Accounts Payable Distribution	Weekly Printout of Expenditures for Each Department
	Microfilm	Accounts Payable Disbursement Reg.	Weekly Printout of Expenditures Summarized by Vendor
	Paper	Annual Vendor Summary	Annual Printout of Expenditures Summarized by Vendor
1969	Paper	Annual Vendor Summary	Annual Printout of Expenditures Summarized by Vendor
	Microfilm	Accounts Payable Disbursement Reg.	Weekly Printout of Expenditures Summarized by Vendor

Accounts Payable Records

Camcar: All Rockford & Belvidere Facilities
(Excluding Sems Products)

<u>Year</u>	<u>Media</u>	<u>Report Type</u>	<u>Report Description</u>
1970	Microfilm	Accounts Payable Distribution	Weekly Printout of Expenditures for Each Department
1971	Paper	Accounts Payable Disbursement Summary	Annual Printout of Expenditures Summarized by Vendor
1972	Microfilm	Accounts Payable Disbursement Summary	Annual Printout of Expenditures Summarized by Vendor
1973	Paper	Accounts Payable Disbursement Summary	Annual Printout of Expenditures Summarized by Vendor
1974	Paper	Accounts Payable Disbursement Summary	Annual Printout of Expenditures Summarized by Vendor
1975	Paper	Accounts Payable Disbursement Summary	Annual Printout of Expenditures Summarized by Vendor
1976	Paper	Accounts Payable Disbursement Summary	Annual Printout of Expenditures Summarized by Vendor
1977	Paper	Accounts Payable Disbursement Summary	Annual Printout of Expenditures Summarized by Vendor
1978	Paper	Accounts Payable Disbursement Summary	Annual Printout of Expenditures Summarized by Vendor
1979	Paper	Accounts Payable Disbursement Summary	Annual Printout of Expenditures Summarized by Vendor
1980	Paper	Accounts Payable Disbursement Summary	Annual Printout of Expenditures Summarized by Vendor

W-CR0551.020

Accounts Payable Records
Sems Products Div. Camcar/Textron Inc.

<u>Year</u>	<u>Media</u>	<u>Report Type</u>	<u>Report Description</u>
1965	-	-	No Records Available
1966	-	-	No Records Available
1967	Microfilm	Accounts Payable Distribution	Weekly Printout of Expenditures for Each Department
1968	Microfilm	Accounts Payable Distribution	Weekly Printout of Expenditures for Each Department
	Microfilm	Accounts Payable Disbursement Reg.	Weekly Printout of Expenditures Summarized by Vendor
1969	Microfilm	Accounts Payable Disbursement Reg.	Weekly Printout of Expenditures Summarized by Vendor
1970	Paper	Accounts Payable Distribution	Weekly Printout of Expenditures for Each Department
1971	Paper	Accounts Payable Disbursement Summary	Annual Printout of Expenditures Summarized by Vendor
1972	Microfilm	Accounts Payable Disbursement Summary	Annual Printout of Expenditures Summarized by Vendor
1973	Microfilm	Accounts Payable Disbursement Summary	Annual Printout of Expenditures Summarized by Vendor
	Microfilm	Accounts Payable Disbursement Reg.	Weekly Printout of Expenditures Summarized by Vendor

Accounts Payable Records
Sems Products Div. Camcar/Textron Inc.

<u>Year</u>	<u>Media</u>	<u>Report Type</u>	<u>Report Description</u>
1974	Microfilm	Accounts Payable Disbursement Summary	Annual Printout of Expenditures Summarized by Vendor
	Microfilm	Accounts Payable Distribution	Weekly Printout of Expenditures for Each Department
1975	Paper	Accounts Payable Disbursement Summary	Annual Printout of Expenditures Summarized by Vendor
1976	Paper	Accounts Payable Disbursement Summary	Annual Printout of Expenditures Summarized by Vendor
1977	Paper	Accounts Payable Disbursement Summary	Annual Printout of Expenditures Summarized by Vendor
1978	Paper	Accounts Payable Disbursement Summary	Annual Printout of Expenditures Summarized by Vendor
1979	Paper	Accounts Payable Disbursement Summary	Annual Printout of Expenditures Summarized by Vendor
1980	Paper	Accounts Payable Disbursement Summary	Annual Printout of Expenditures Summarized by Vendor

W-CR0552.020

April 24, 1971

Mr. Clyde E. Aspling
Camcar Screw & Mfg. Co.
600 18th Avenue
Rockford, Illinois 61101

Dear Mr. Aspling:

This is to confirm our conversation during my visit 4-23, concerning disposal of waste oils.

Conservation Chemical will pick up your drummed waste oil and transport it to our plant in Gary, Indiana. The oil will be incinerated according to applicable pollution control regulations.

Our charge would be \$6.75 per drum (55 gallon), f.o.b. our truck at your plant.

We understand that timing of pick-ups would allow Conservation to pick up 60 drum loads, either from Camcar or Camcar and others. We also understand that there are no chlorinated solvents, included in these wastes, and that Camcar will advise Conservation of any future inclusion of chlorinated materials.

If this proposal is interesting to you, I will come in to pick up the sample we discussed and confirm this offer.

Thank you for your interest in us. I look forward to seeing you soon.

Yours very truly,

Harold W. Eagan
HWE:pe

Exhibit 5

TEXTRON

INC.

(a Delaware corporation)

BY-LAWS

As Restated March 26, 1988

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TEXTRON INC.
(a Delaware corporation)

BY-LAWS

ARTICLE I.

OFFICES.

SECTION 1.01. *Registered Office.* The registered office of the Corporation in the State of Delaware shall be at No. 1209 Orange Street, City of Wilmington, County of New Castle. The name of the resident agent in charge thereof shall be The Corporation Trust Company.

SECTION 1.02. *Other Offices.* The Corporation may also have an office or offices in the City of Providence, State of Rhode Island, and at such other place or places either within or without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation require.

ARTICLE II.

MEETINGS OF STOCKHOLDERS.

SECTION 2.01. *Place of Meetings.* All meetings of the stockholders of the Corporation shall be held at such place either within or without the State of Delaware as shall be fixed by the Board of Directors and specified in the respective notices or waivers of notice of said meetings.

SECTION 2.02. *Annual Meetings.* (a) The annual meeting of the stockholders for the election of directors and for the transaction of such other business as properly may come before the meeting shall be held at the principal office of the Corporation in the State of Delaware, or such place as shall be fixed by the Board of Directors, at ten o'clock in the forenoon, local time, on the last Wednesday in April in each

year, if not a legal holiday at the place where such meeting is to be held, and, if a legal holiday, then on the next succeeding business day not a legal holiday at the same hour. (b) In respect of the annual meeting for any particular year the Board of Directors may, by resolution fix a different day, time or place (either within or without the State of Delaware) for the annual meeting. (c) If the election of directors shall not be held on the day designated herein or the day fixed by the Board, as the case may be, for any annual meeting, or on the day of any adjourned session thereof, the Board of Directors shall cause the election to be held at a special meeting as soon thereafter as conveniently may be. At such special meeting the stockholders may elect the directors and transact other business with the same force and effect as at an annual meeting duly called and held. (d) At any annual meeting, or special meeting held in lieu thereof, only such business shall be conducted as shall have been brought before the meeting by or at the direction of the Board of Directors or by any stockholder who complies with the procedures set forth in this Section 2.02 (d). Except as otherwise provided by Section 3.03, by the Certificate of Incorporation or by law, the only business which shall be conducted at any such meeting of the stockholders shall (i) have been specified in the written notice of the meeting (or any supplement thereto) given pursuant to Section 2.04, (ii) be brought before the meeting at the direction of the Board of Directors or the chairman of the meeting or (iii) have been specified in a written notice to the Secretary, in accordance with all of the following requirements, by or on behalf of any stockholder who shall have been a stockholder of record on the record date for such meeting and who shall continue to be entitled to vote thereat. Each such notice must be delivered to, or be mailed and received at the principal executive offices of the Corporation not less than 50 days nor more than 75 days prior to the meeting; provided, however, that in the event that less than 65 days notice or prior public disclosure of the date of the meeting is

given or made to stockholders, notice by the stockholder to be timely must be received not later than the close of business on the 15th day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made, whichever occurs first. Such stockholder's notice to the Secretary shall set forth: (i) a description of each item of business proposed to be brought before the meeting; (ii) the name and address of the stockholder proposing to bring such item of business before the meeting; (iii) the class and number of shares of stock held of record, owned beneficially and represented by proxy by such stockholder as of the record date for the meeting (if such date shall then have been made publicly available) and as of the date of such notice by the stockholder; and (iv) all other information which would be required to be included in a proxy statement filed with the Securities and Exchange Commission if, with respect to any such item of business, such stockholder were a participant in a solicitation subject to Regulation 14A under the Securities Exchange Act of 1934, as amended.

The chairman of the meeting may, if the facts warrant, determine that an item of business was not brought before the meeting in accordance with the foregoing procedure, and if he should so determine, he shall so declare to the meeting and that business shall be disregarded.

SECTION 2.03. *Special Meetings.* A special meeting of the stockholders for any purpose or purposes may be called at any time by the chief executive officer or by order of the Board of Directors. The business which may be transacted at a special meeting is limited to that set forth in the notice of special meeting and, if the notice so provides, such other matters as the chief executive officer or the Board of Directors may bring before the meeting.

SECTION 2.04. *Notice of Meetings.* (a) Except as otherwise required by statute, notice of each annual or special meeting of the stockholders shall be given to each stock-

holder of record entitled to vote at such meeting not less than ten days nor more than sixty days before the day on which the meeting is to be held by delivering written notice thereof to him personally or by mailing such notice, postage prepaid, addressed to him at his post-office address last shown in the records of the Corporation or by transmitting notice thereof to him at such address by telegraph, cable or any other available method. Every such notice shall state the time and place of the meeting and, in case of a special meeting, shall state briefly the purposes thereof. (b) Except as otherwise required by statute, notice of any meeting of stockholders shall not be required to be given to any stockholders who shall attend such meeting in person or by proxy or who shall, in person or by attorney thereunto authorized, waive such notice in writing or by telegraph, cable or any other available method either before or after such meeting. Notice of any adjourned meeting of the stockholders shall not be required to be given except when expressly required by law.

SECTION 2.05. *Quorum.* (a) At each meeting of the stockholders, except where otherwise provided by statute, the Certificate of Incorporation or these By-Laws, the holders or record of a majority of the issued and outstanding shares of stock of the Corporation entitled to vote at such meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business. (b) In the absence of a quorum a majority in interest of the stockholders of the Corporation entitled to vote, present in person or represented by proxy or, in the absence of all such stockholders, any officer entitled to preside at, or act as secretary of, such meeting, shall have the power to adjourn the meeting from time to time, until stockholders holding the requisite amount of stock shall be present or represented. At any such adjourned meeting at which a quorum shall be present any business may be transacted which might have been transacted at the meeting as originally called.

SECTION 2.06. *Organization.* At each meeting of the stockholders the Chairman of the Board or, in his absence, the President or, in the absence of the Chairman of the Board and the President, the Vice Chairman of the Board or, in the absence of the Chairman of the Board, the President and the Vice Chairman of the Board, any Vice President or, in the absence of all such officers, a chairman chosen by a majority vote of the stockholders entitled to vote thereat, present in person or by proxy, shall act as chairman, and the Secretary or an Assistant Secretary of the Corporation or, in the absence of the Secretary and all Assistant Secretaries, a person whom the chairman of such meeting shall appoint shall act as secretary of the meeting and keep the minutes thereof.

SECTION 2.07. *Voting.* (a) Except as otherwise provided by law or by the Certificate of Incorporation or these By-Laws, at every meeting of the stockholders each stockholder shall be entitled to one vote, in person or by proxy, for each share of capital stock of the Corporation registered in his name on the books of the Corporation:

(i) on the date fixed pursuant to Section 8.03 of these By-Laws as the record date for the determination of stockholders entitled to vote at such meeting; or

(ii) if no such record date shall have been fixed, then the record date shall be at the close of business on the day next preceding the day on which notice of such meeting is given.

(b) Persons holding stock in a fiduciary capacity shall be entitled to vote the shares so held. In the case of stock held jointly by two or more executors, administrators, guardians, conservators, trustees or other fiduciaries, such fiduciaries may designate in writing one or more of their number to represent such stock and vote the shares so held, unless there is a provision to the contrary in the instrument, if any, defining their powers and duties. (c) Persons whose stock is

pledged shall be entitled to vote thereon until such stock is transferred on the books of the Corporation to the pledgee, and thereafter only the pledgee shall be entitled to vote. (d) Any stockholder entitled to vote may do so in person or by his proxy appointed by an instrument in writing subscribed by such stockholder or by his attorney thereunto authorized, or by a telegram, cable or any other available method delivered to the secretary of the meeting; provided, however, that no proxy shall be voted after three years from its date, unless said proxy provides for a longer period. (e) At all meetings of the stockholders, all matters (except where other provision is made by law or by the Certificate of Incorporation or these By-Laws) shall be decided by the vote of a majority in interest of the stockholders entitled to vote thereon, present in person or by proxy, at such meeting, a quorum being present.

SECTION 2.08. *Inspectors.* The chairman of the meeting may at any time appoint two or more inspectors to serve at a meeting of the stockholders. Such inspectors shall decide upon the qualifications of voters, accept and count the votes for and against the questions presented, report the results of such votes, and subscribe and deliver to the secretary of the meeting a certificate stating the number of shares of stock issued and outstanding and entitled to vote thereon and the number of shares voted for and against the questions presented. The inspectors need not be stockholders of the Corporation, and any director or officer of the Corporation may be an inspector on any question other than a vote for or against his election to any position with the Corporation or on any other question in which he may be directly interested. Before acting as herein provided each inspector shall subscribe an oath faithfully to execute the duties of an inspector with strict impartiality and according to the best of his ability.

SECTION 2.09. *List of Stockholders.* (a) It shall be the duty of the Secretary or other officer of the Corporation who

shall have charge of its stock ledger to prepare and make, or cause to be prepared and made, at least ten days before every meeting of the stockholders, a complete list of the stockholders entitled to vote thereat, arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of stockholder. Such list shall be open during ordinary business hours to the examination of any stockholder for any purpose germane to the meeting for a period of at least ten days prior to the election, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting or, if not so specified, at the place where the meeting is to be held. (b) Such list shall be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present. (c) Upon the willful neglect or refusal of the directors to produce such list at any meeting for the election of directors they shall be ineligible for election to any office at such meeting. (d) The stock ledger shall be conclusive evidence as to who are the stockholders entitled to examine the stock ledger and the list of stockholders required by this Section 2.09 on the books of the Corporation or to vote in person or by proxy at any meeting of stockholders.

ARTICLE III.

BOARD OF DIRECTORS.

SECTION 3.01. *General Powers.* The business, property and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

SECTION 3.02. *Number, Qualifications and Term of Office.* (a) The number of directors of the Corporation which shall constitute the whole Board of Directors shall be such number as from time to time shall be fixed by the Board of Directors in accordance with the Certificate of Incorporation of the Corporation. (b) No person shall be elected a director

who has attained the age of 72. (c) Each director shall hold office as set forth in the Certificate of Incorporation of the Corporation.

SECTION 3.03. *Nomination and Election of Directors.* Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors. Nominations of persons for election to the Board of Directors at a meeting of the stockholders may be made at a meeting of stockholders by or at the direction of the Board of Directors by any nominating committee or person appointed by the Board or by any stockholder of the Corporation entitled to vote for the election of directors at the meeting who complies with the notice procedures set forth in this Section 3.03. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary. To be timely, a stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation not less than 50 days nor more than 75 days prior to the meeting; provided, however, that in the event that less than 65 days' notice or prior public disclosure of the date of the meeting of stockholders is given or made to stockholders, notice by the stockholder to be timely must be so received not later than the close of business on the 15th day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made, whichever first occurs. Such stockholder's notice to the Secretary shall set forth: (a) as to each person whom the stockholder proposes to nominate for election or re-election as a director (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class and number of shares of capital stock of the Corporation which are beneficially owned by the person and (iv) any other information relating to the person that is required to be disclosed in solicitations for proxies for election of directors pursuant to Regulation 14A under the Securities Exchange Act of 1934,

as amended (the "Proxy Rules"); and (b) as to the stockholder giving the notice (i) the name and record address of stockholder, (ii) the class and number of shares of capital stock of the Corporation which are beneficially owned by the stockholder as of the record date for the meeting (if such date shall then have been made publicly available) and of the date of such notice, (iii) a representation that the stockholder intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice, (iv) a description of all arrangements or understandings between such stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by such stockholder, (v) such other information regarding each nominee proposed by such stockholder as would be required to be included in a proxy statement filed pursuant to the Proxy Rules and (vi) the consent of each nominee to serve as a director of the Corporation if so elected. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as a director of the Corporation. No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth herein.

The chairman of the meeting may, if the facts warrant, determine that a nomination was not made in accordance with the foregoing procedures, and if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded. At each meeting of the stockholders for the election of directors at which a quorum is present, the persons, not exceeding the authorized number of directors as fixed by the Board of Directors in accordance with the Certificate of Incorporation, receiving the greatest number of votes of the stockholders entitled to vote thereon, present in person or by proxy, shall be the directors for the term as set forth in the Certificate of Incorporation.

SECTION 3.04. *Quorum and Manner of Acting.* (a) Except as otherwise provided by statute or by the Certificate of Incorporation, a majority of the directors at the time in office shall constitute a quorum for the transaction of business at any meeting and the affirmative action of a majority of the directors present at any meeting at which a quorum is present shall be required for the taking of any action by the Board of Directors. (b) In the event the Secretary is informed that one or more directors will be out of the continental limits of the United States at the date of any regular or special meeting of the Board, or if one or more of the directors shall be disqualified to vote at such meeting, then the required quorum shall be reduced by one for each such director so absent or disqualified; provided, however, that in no event shall the quorum as adjusted be less than one third of the total number of directors. (c) In the absence of a quorum at any meeting of the Board such meeting need not be held, or a majority of the directors present thereat or, if no director be present, the Secretary may adjourn such meeting from time to time until a quorum shall be present. Notice of any adjourned meeting need not be given.

SECTION 3.05. *Offices, Place of Meeting and Records.* The Board of Directors may hold meetings, have an office or offices and keep the books and records of the Corporation at such place or places within or without the State of Delaware as the Board may from time to time determine. The place of meeting shall be specified or fixed in the respective notices or waivers of notice thereof, except where otherwise provided by statute, by the Certificate of Incorporation or these By-Laws.

SECTION 3.06. *Annual Meeting.* The Board of Directors shall meet for the purpose of organization, the election of officers and the transaction of other business, as soon as practicable following each annual election of directors. Such meeting shall be called and held at the place and time

specified in the notice or waiver of notice thereof as in the case of a special meeting of the Board of Directors.

SECTION 3.07. *Regular Meetings.* Regular meetings of the Board of Directors shall be held at such places and at such times as the Board shall from time to time by resolution determine. If any day fixed for a regular meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting which would otherwise be held on that day shall be held at said place at the same hour on the next succeeding business day. Notice of regular meetings need not be given.

SECTION 3.08. *Special Meetings; Notice.* Special meetings of the Board of Directors shall be held whenever called by the Chairman of the Board or the President or by any two of the directors. Notice of each such meeting shall be mailed to each director, addressed to him at his residence or usual place of business, at least three days before the day on which the meeting is to be held, or shall be sent to him at his residence or at such place of business by telegraph, cable or other available means, or shall be delivered personally or by telephone, not later than two days (or such shorter period as the person or persons calling such meeting may deem necessary or appropriate in the circumstances) before the day on which the meeting is to be held. Each such notice shall state the time and place of the meeting but need not state the purposes thereof except as otherwise herein expressly provided. Notice of any such meeting need not be given to any director, however, if waived by him in writing or by telegraph, cable or otherwise, whether before or after such meeting shall be held, or if he shall be present at such meeting.

SECTION 3.09. *Organization.* At each meeting of the Board of Directors the Chairman of the Board or, in his absence, the President or, in the absence of each of them, the Vice Chairman of the Board or, in the absence of all such officers, a director chosen by a majority of the directors

present shall act as chairman. The Secretary or, in his absence an Assistant Secretary or, in the absence of the Secretary and all Assistant Secretaries, a person whom the chairman of such meeting shall appoint shall act as secretary of such meeting and keep the minutes thereof.

SECTION 3.10. *Order of Business.* At all meetings of the Board of Directors business shall be transacted in the order determined by the Board.

SECTION 3.11. *Removal of Directors.* Except as otherwise provided in the Certificate of Incorporation or in these By-Laws, any director may be removed, with cause, at any time, by the affirmative vote of the holders of record of a majority of the issued and outstanding stock entitled to vote for the election of directors of the Corporation given at a special meeting of the stockholders called and held for the purpose; and the vacancy in the Board caused by any such removal may be filled by the Board in the manner provided in the Certificate of Incorporation.

SECTION 3.12. *Resignation.* Any director of the Corporation may resign at any time by giving written notice of his resignation to the Board of Directors, to the Chairman of the Board, the Vice Chairman of the Board, the President, any Vice President or the Secretary of the Corporation. Such resignation shall take effect at the date of receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 3.13. *Vacancies.* Any vacancy in the Board of Directors caused by death, resignation, removal, disqualification, an increase in the number of directors, or any other cause may be filled by the remaining directors then in office as set forth in the Certificate of Incorporation. Each director so elected shall hold office as set forth in the Certificate of Incorporation.

SECTION 3.14. *Compensation.* Each director, in consideration of his serving as such, shall be entitled to receive from the Corporation such amount per annum or such fees for attendance at directors' meetings, or both, as the Board of Directors shall from time to time determine, together with reimbursement for the reasonable expenses incurred by him in connection with the performance of his duties; provided that nothing herein contained shall be construed to preclude any director from serving the Corporation or its subsidiaries in any other capacity and receiving proper compensation therefor.

ARTICLE IV.

COMMITTEES.

SECTION 4.01. *Executive Committee.* The Board of Directors shall, by resolution or resolutions passed by a majority of the whole Board, appoint an Executive Committee to consist of not less than three nor more than eight members of the Board of Directors, including the Chairman of the Board, the Vice Chairman of the Board and the President, and shall designate one of the members as its chairman. Notwithstanding any limitation on the size of the Executive Committee, the Committee may invite members of the Board to attend its meetings. In such case such invitees shall be entitled to vote on matters considered at such meetings and shall receive such fee, if any, as shall be fixed by the Board of Directors for such attendance.

Each member of the Executive Committee shall hold office, so long as he shall remain a director, until the first meeting of the Board of Directors held after the next annual election of directors and until his successor is duly appointed and qualified. The chairman of the Executive Committee or, in his absence, the Chairman of the Board or a member of the Committee chosen by a majority of the members present shall preside at meetings of the Executive

Committee and the Secretary or an Assistant Secretary of the Corporation, or such other person as the Executive Committee shall from time to time determine, shall act as secretary of the Executive Committee.

The Board of Directors, by action of the majority of the whole Board, shall fill vacancies in the Executive Committee.

SECTION 4.02. *Powers.* During the intervals between the meetings of the Board of Directors, the Executive Committee shall have and may exercise all the powers of the Board of Directors in all cases in which specific directions shall not have been given by the Board of Directors; but neither the Executive Committee nor any other committee created under these By-Laws shall have the power or authority to amend the Certificate of Incorporation, adopt an agreement of merger or consolidation, recommend to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommend to the stockholders a dissolution of the Corporation or a revocation of a dissolution, or amend the By-Laws of the Corporation; and, unless the resolution, By-Laws, or Certificate of Incorporation expressly so provides, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock.

SECTION 4.03. *Procedure; Meetings; Quorum.* The Executive Committee shall fix its own rules of procedure subject to the approval of the Board of Directors, and shall meet at such times and at such place or places as may be provided by such rules. At every meeting of the Executive Committee the presence of a majority of all the members shall be necessary to constitute a quorum and the affirmative vote of a majority of the members present shall be necessary for the adoption by it of any resolution. In the absence of a quorum at any meeting of the Executive Committee such meeting need not be held, or a majority of the members present thereat or, if no members be present, the secretary

of the meeting may adjourn such meeting from time to time until a quorum be present.

SECTION 4.04. *Compensation.* Each member of the Executive Committee shall be entitled to receive from the Corporation such fee, if any, as shall be fixed by the Board of Directors, together with reimbursement for the reasonable expenses incurred by him in connection with the performance of his duties.

SECTION 4.05. *Other Board Committees.* The Board of Directors may from time to time, by resolution passed by a majority of the whole Board, designate one or more committees in addition to the Executive Committee, each committee to consist of two or more of the directors of the Corporation. Any such committee, to the extent provided in the resolution or in the By-Laws of the Corporation, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation.

A majority of all the members of any such committee may determine its action and fix the time and place of its meetings, unless the Board of Directors shall otherwise provide. The Board of Directors shall have power to change the members of any committee at any time, to fill vacancies and to discharge any such committee, either with or without cause, at any time.

SECTION 4.06. *Alternates.* The Board of Directors may, by resolution passed by a majority of the whole Board, designate one or more directors as alternate members of any committee who may replace any absent or disqualified member at any meeting of the committee; provided, however, that in the absence of any such designation of alternates the member or members of any committee present at any meeting and not disqualified from acting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any absent or disqualified member.

SECTION 4.07. *Additional Committees.* The Board of Directors may from time to time create such additional committees of directors, officers, employees or other persons designated by it (or any combination of such persons) for the purpose of advising with the Board, the Executive Committee and the officers and employees of the Corporation in all such matters as the Board shall deem advisable and with such functions and duties as the Board shall by resolutions prescribe.

A majority of all the members of any such committee may determine its action and fix the time and place of its meetings, unless the Board of Directors shall otherwise provide. The Board of Directors shall have power to change the members of any committee at any time, to fill vacancies and to discharge any such committee, either with or without cause, at any time.

ARTICLE V.

ACTION BY CONSENT OR TELEPHONE.

SECTION 5.01. *Consent of Directors.* Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if prior to such action a written consent thereto is signed by all members of the Board or of such committee, as the case may be, and such written consent is filed with the minutes of the proceedings of the Board or such committee.

SECTION 5.02. *Telephone Meetings.* Members of the Board of Directors or any committee designated by the Board of Directors may participate in a meeting of such Board or Committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other.

ARTICLE VI.

OFFICERS.

SECTION 6.01. *Number.* The principal officers of the Corporation shall be a Chairman of the Board, a Vice Chairman of the Board, a President, one or more Vice Presidents (the number thereof and variations in title to be determined by the Board of Directors), a Treasurer and a Secretary. In addition, there may be such other or subordinate officers, agents and employees as may be appointed in accordance with the provisions of Section 6.03. Any two or more offices, except those of President and Secretary, may be held by the same person.

SECTION 6.02 *Election, Qualifications and Term of Office.* Each officer of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 6.03, shall be elected annually by the Board of Directors and shall hold office until his successor shall have been duly elected and qualified, or until his death, or until he shall have resigned or shall have been removed in the manner herein provided. The Chairman of the Board, the Vice Chairman of the Board and the President shall be and remain directors.

SECTION 6.03. *Other Officers.* The Corporation may have such other officers, agents, and employees as the Board of Directors may deem necessary including a Controller, one or more Assistant Controllers, one or more Assistant Treasurers and one or more Assistant Secretaries, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors, the Chairman of the Board or the President may from time to time determine. The Board of Directors may delegate to any principal officer the power to appoint or remove any such subordinate officers, agents or employees.

SECTION 6.04. *Removal.* Any officer may be removed, either with or without cause, by the vote of a majority of the

whole Board of Directors or, except in case of any officer elected by the Board of Directors, by any committee or officer upon whom the power of removal may be conferred by the Board of Directors.

SECTION 6.05. *Resignation.* Any officer may resign at any time by giving written notice to the Board of Directors, the Chairman of the Board or the President. Any such resignation shall take effect at the date of receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 6.06. *Vacancies.* A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled for the unexpired portion of the term in the manner prescribed in these By-Laws for regular election or appointment to such office.

SECTION 6.07. *Chairman of the Board.* The Chairman of the Board shall, when present, preside at all meetings of the Board of Directors and at all meetings of the stockholders and shall have such additional powers and shall perform such further duties as may from time to time be assigned to him by the Board of Directors, the Executive Committee or the chief executive officer of the Corporation.

SECTION 6.08. *Vice Chairman of the Board.* The Vice Chairman of the Board shall, in the absence of the Chairman of the Board and the President, preside at all meetings of the Board of Directors and at all meetings of the stockholders and shall have such powers and shall perform such further duties as may from time to time be assigned to him by the Board of Directors, the Executive Committee or the chief executive officer of the Corporation.

SECTION 6.09. *President.* The President shall have general direction of the operations of the Corporation, subject to the control of the Board of Directors, the Executive Committee or the chief executive officer of the Corporation. He shall, in the absence of the Chairman of the Board,

preside at all meetings of the Board of Directors and at all meetings of the stockholders and shall have such additional powers and shall perform such further duties as may from time to time be assigned to him by the Board of Directors, the Executive Committee or the chief executive officer of the Corporation.

SECTION 6.10 *Chief Executive Officer.* The Board of Directors shall designate either the Chairman of the Board or the President as the chief executive officer of the Corporation. The chief executive officer shall have direct charge of the business and affairs of the Corporation.

SECTION 6.11. *Vice Presidents.* Each Vice President shall have such powers and perform such duties as the Board of Directors or the Executive Committee may from time to time prescribe or as shall be assigned to him by the Chairman of the Board or the President.

SECTION 6.12. *Treasurer.* The Treasurer shall have charge and custody of, and be responsible for, all funds and securities of the Corporation, and shall deposit all such funds to the credit of the Corporation in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of these By-Laws; he shall disburse the funds of the Corporation as may be ordered by the Board of Directors or the Executive Committee, making proper vouchers for such disbursements, and shall render to the Board of Directors or the stockholders, whenever the Board may require him so to do, a statement of all his transactions as Treasurer or the financial condition of the Corporation; and, in general, he shall perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the Board of Directors, any Committee of the Board designated by it so to act or the Chairman of the Board or the President.

SECTION 6.13. *Secretary.* The Secretary shall record or cause to be recorded in books provided for the purpose the

minutes of the meetings of the stockholders, the Board of Directors, and all committees of which a secretary shall not have been appointed; shall see that all notices are duly given in accordance with the provisions of these By-Laws and as required by law; shall be custodian of all corporate records (other than financial) and of the seal of the Corporation and see that the seal is affixed to all documents the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these By-Laws; shall keep, or cause to be kept, the list of stockholders as required by Section 2.09, which includes the post-office addresses of the stockholders and the number of shares held by them, respectively, and shall make or cause to be made, all proper changes therein, shall see that the books, reports, statements, certificates and all other documents and records required by law are properly kept and filed; and, in general, shall perform all duties incident to the office of Secretary and such other duties as may from time to time be assigned to him by the Board of Directors, the Executive Committee or the Chairman of the Board or the President.

SECTION 6.14. *Controller.* The Controller shall be in charge of the books and records of account of the Corporation and of its statistical records. He shall keep or cause to be kept at such office or offices as the Board of Directors may from time to time designate complete and accurate accounts of all assets, liabilities, receipts, disbursements and other transactions of the Corporation; shall cause regular audits of such books and records to be made; shall be responsible for the preparation and filing of all reports and actions related to or based upon the books and records of the Corporation; shall render financial statements at the annual meeting of stockholders, if called upon so to do, or at the request of any director or the Board of Directors; shall render to the Board of Directors such statistical reports and analyses as the Board from time to time may require; and, in general, shall perform all the duties incident to the office of Controller and such other duties as from time to time may be

assigned to him by the Board of Directors, the Executive Committee or the Chairman of the Board or the President.

SECTION 6.15. *Salaries.* The salaries of the principal officers of the Corporation shall be fixed from time to time by the Board of Directors, and none of such officers shall be prevented from receiving a salary by reason of the fact that he is also a director of the Corporation.

ARTICLE VII.

CONTRACTS, CHECKS, DRAFTS, BANK ACCOUNTS, ETC.

SECTION 7.01. *Execution of Contracts.* Unless the Board of Directors or the Executive Committee shall otherwise determine, the Chairman of the Board, the Vice Chairman of the Board, the President, any Vice President or the Treasurer and the Secretary or any Assistant Secretary may enter into any contract or execute any contract or other instrument, the execution of which is not otherwise specifically provided for, in the name and on behalf of the Corporation. The Board of Directors, or any committee designated thereby with power so to act, except as otherwise provided in these By-Laws, may authorize any other or additional officer or officers or agent or agents of the Corporation to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances. Unless authorized so to do by these By-Laws or by the Board of Directors or by any such committee, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable pecuniarily for any purpose or to any amount.

SECTION 7.02. *Loans.* No loan shall be contracted on behalf of the Corporation, and no evidence of indebtedness shall be issued, endorsed or accepted in its name, unless authorized by the Board of Directors or Executive Commit-

tee or other committee designated by the Board so to act. Such authority may be general or confined to specific instances. When so authorized, the officer or officers thereunto authorized may effect loans and advances at any time for the Corporation from any bank, trust company or other institution, or from any firm, corporation or individual, and for such loans and advances may make, execute and deliver promissory notes or other evidences of indebtedness of the Corporation, and, when authorized as aforesaid, as security for the payment of any and all loans, advances, indebtedness and liabilities of the Corporation, may mortgage, pledge, hypothecate or transfer any real or personal property at any time owned or held by the Corporation, and to that end execute instruments of mortgage or pledge or otherwise transfer such property.

SECTION 7.03. *Checks, Drafts, etc.* All checks, drafts, bills of exchange or other orders for the payment of money, obligations, notes, or other evidence of indebtedness, bills of lading, warehouse receipts and insurance certificates of the Corporation, shall be signed or endorsed by such officer or officers, agent or agents, attorney or attorneys, employee or employees, of the Corporation as shall from time to time be determined by resolution of the Board of Directors or Executive Committee or other committee designated by the Board so to act.

SECTION 7.04. *Deposits.* All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors or Executive Committee or other committee designated by the Board so to act may from time to time designate, or as may be designated by any officer or officers or agent or agents of the Corporation to whom such power may be delegated by the Board of Directors or Executive Committee or other committee designated by the Board so to act and, for the purpose of such deposit and for the purposes of collection

for the account of the Corporation, all checks, drafts, and other orders for the payment of money which are payable to the order of the Corporation may be endorsed, assigned and delivered by any officer, agent or employee of the Corporation or in such other manner as may from time to time be designated or determined by resolution of the Board of Directors or Executive Committee or other committee designated by the Board so to act.

SECTION 7.05. *Proxies in Respect of Securities of Other Corporations.* Unless otherwise provided by resolution adopted by the Board of Directors or the Executive Committee or other committee so designated to act by the Board, the Chairman of the Board or the Vice Chairman of the Board or the President or any Vice President may from time to time appoint an attorney or attorneys or agent or agents of the Corporation, in the name and on behalf of the Corporation, to cast the votes which the Corporation may be entitled to cast as the holder of stock or other securities in any other corporation, association or trust any of whose stock or other securities may be held by the Corporation, at meetings of the holders of the stock or other securities of such other corporation, association or trust, or to consent in writing, in the name of the Corporation as such holder, to any action by such other corporation, association or trust, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent, and may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal, or otherwise, all such written proxies or other instruments as he may deem necessary or proper in the premises.

ARTICLE VIII.

BOOKS AND RECORDS.

SECTION 8.01. *Place.* The books and records of the Corporation may be kept at such places within or without the

State of Delaware as the Board of Directors may from time to time determine. The stock record books and the blank stock certificate books shall be kept by the Secretary or by any other officer or agent designated by the Board of Directors.

SECTION 8.02. *Addresses of Stockholders.* Each stockholder shall furnish to the Secretary of the Corporation or to the transfer agent of the Corporation an address at which notices of meetings and all other corporate notices may be served upon or mailed to him, and if any stockholder shall fail to designate such address, corporate notices may be served upon him by mail, postage prepaid, to him at his post-office address last known to the Secretary or to the transfer agent of the Corporation or by transmitting a notice thereof to him at such address by telegraph, cable or other available method.

SECTION 8.03. *Record Dates.* The Board of Directors may fix in advance a date, not exceeding sixty days preceding the date of any meeting of stockholders, or the date for the payment of any dividend, or the date for the allotment of any rights, or the date when any change or conversion or exchange of capital stock of the Corporation shall go into effect, or a date in connection with obtaining such consent, as a record date for the determination of the stockholders entitled to notice of, and to vote at, any such meeting or any adjournment thereof, or entitled to receive payment of any such dividend, or to any such allotment of rights, or to exercise the rights in respect of any change, conversion or exchange of capital stock of the Corporation, or to give such consent, and in each such case such stockholders and only such stockholders as shall be stockholders of record on the date so fixed shall be entitled to notice of, or to vote at, such meeting and any adjournment thereof, or to receive payment of such dividend, or to receive such allotment of rights, or to exercise such rights or to give such consent, as the case may be, notwithstanding any transfer of any stock on the books

of the Corporation after any such record date fixed as aforesaid.

SECTION 8.04. *Audit of Books and Accounts.* The books and accounts of the Corporation shall be audited at least once in each fiscal year by certified public accountants of good standing, elected by the Board of Directors.

ARTICLE IX.

SHARES AND THEIR TRANSFER.

SECTION 9.01. *Certificates of Stock.* Every owner of stock of the Corporation shall be entitled to have a certificate certifying the number of shares owned by him in the Corporation and designating the class of stock to which such shares belong, which shall otherwise be in such form as the Board of Directors shall prescribe. Each such certificate shall be signed by the Chairman of the Board or the Vice Chairman of the Board or the President or a Vice President and the Treasurer or any Assistant Treasurer or the Secretary or any Assistant Secretary of the Corporation; provided, however, that where such certificate is signed or countersigned by a transfer agent or registrar the signatures of such officers of the Corporation and the seal of the Corporation may be in facsimile form. In case any officer or officers who shall have signed, or whose facsimile signature or signatures shall have been used on, any such certificate or certificates shall cease to be such officer or officers of the Corporation, whether because of death, resignation or otherwise, before such certificate or certificates shall have been delivered by the Corporation, such certificate or certificates may nevertheless be issued and delivered by the Corporation as though the person or persons who signed such certificate or whose facsimile signature or signatures shall have been used thereon had not ceased to be such officer or officers of the Corporation.

in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) The Corporation shall indemnify, to the full extent permitted by law, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was an Agent against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation and except that no such indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such Court of Chancery or such other court shall deem proper.

(c) To the extent that an Agent shall be successful on the merits or otherwise (including dismissal of an action without prejudice or the settlement of an action without admission of liability) in defense of any action, suit or proceeding

referred to in paragraphs (a) and (b), or in defense of any claim, issue or matter therein, he shall be indemnified, to the full extent permitted by law, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(d) Any indemnification under paragraphs (a) and (b) (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the Agent is proper in the circumstances because he has met the applicable standard of conduct set forth in paragraphs (a) and (b). Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the stockholders.

(e) Expenses incurred by an Agent in defending a civil or criminal action, suit or proceeding referred to in paragraphs (a) and (b) shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Agent to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article XII. Notwithstanding the foregoing, no advance shall be made by the Corporation if a determination is reasonably and promptly made by the Board of Directors by a majority vote of a quorum of disinterested directors, or (if such a quorum is not obtainable or, even if obtainable, a quorum of disinterested directors so directs) by independent legal counsel in a written opinion, that, based upon the facts known to the Board of Directors or counsel at the time such determination is made, such Agent acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal

proceeding, that such Agent believed or had reasonable cause to believe his conduct was unlawful. In no event shall any advance be made in instances where the Board of Directors or independent legal counsel reasonably determines that such person deliberately breached his duty to the Corporation or its stockholders.

(f) The indemnification and advancement of expenses provided by, or granted pursuant to, the other paragraphs of this Article XII shall not be deemed exclusive of any other rights to which those seeking indemnification and advancement of expenses may be entitled under any agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. All rights to indemnification under this Article XII shall be deemed to be provided by a contract between the Corporation and each Agent who serves in such capacity at any time while this Article XII is in effect. Any repeal or modification of this Article XII shall not affect any rights or obligations then existing.

(g) The Corporation may purchase and maintain insurance on behalf of any person who is or was an Agent against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article XII.

(h) For purposes of this Article XII, references to "the Corporation" shall include, in addition to the resulting or surviving corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger, so that any person who is or was a director, officer or employee of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the

provisions of this Article XII with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(i) For purposes of this Article XII, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer or employee of the Corporation which imposes duties on, or involves services by, such director, officer or employee with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article XII.

(j) The indemnification and advancement of expenses provided by, or granted pursuant to, this Article XII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be an Agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

ARTICLE XIII.

WAIVER OF NOTICE.

Whenever any notice whatever is required to be given by statute, these By-Laws of the Certificate of Incorporation, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE XIV.

AMENDMENTS.

These By-Laws may be altered, amended or repealed, in whole or in part, and new By-Laws may be adopted, in whole or in part, by the affirmative vote of the holders of record of a majority of the outstanding stock of the Corporation present in person or represented by proxy and entitled to vote in respect thereof, given at an annual meeting or at any special meeting at which a quorum shall be present, or by the affirmative vote of a majority of the whole Board of Directors given at any meeting. Any By-Law made, altered, amended or repealed by the Board of Directors shall be subject to alteration, amendment or repeal by vote of stockholders as provided above.

TEXTRON INC.

I, _____,
SECRETARY of TEXTRON INC., a Delaware corporation, DO
HEREBY CERTIFY that the foregoing is a true and complete
copy of the By-Laws of said Corporation, and that such By-
Laws are now in full force and effect.

IN WITNESS WHEREOF, I have hereunto subscribed my
name and affixed the seal of said Corporation this _____ day of
_____, 19 ____.

.....
Secretary

TEXTRON INC.

**A Delaware Corporation
Incorporated 1967**

**(Successor to Rhode Island Corporation
Incorporated 1928)**

RESTATED CERTIFICATE OF INCORPORATION

As Filed March 24, 1988

RESTATED CERTIFICATE OF INCORPORATION

OF

TEXTRON INC.

* * * * *

UNDER SECTION 245 OF THE GENERAL CORPORATION LAW

* * * * *

TEXTRON INC., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The name of the corporation is TEXTRON INC. The name under which it was originally incorporated is American Textron Inc.

2. The original Certificate of Incorporation of the corporation was filed with the Secretary of State on July 31, 1967.

3. This Restated Certificate of Incorporation was duly adopted by the Board of Directors in accordance with the provisions of Section 245 of the General Corporation Law of the State of Delaware and only restates and integrates and does not further amend the provisions of the corporation's Certificate of Incorporation as heretofore amended or supplemented. There is no discrepancy between those provisions and the provisions of this Restated Certificate of Incorporation.

4. The text of the Certificate of Incorporation of said TEXTRON INC., as heretofore amended or supplemented, is hereby restated and integrated, without further amendment, to read as follows:

FIRST: The name of the corporation (hereinafter called the "Corporation") is

TEXTRON INC.

SECOND: The respective names of the county and of the city within the county in which the registered office of the Corporation is to be located in the State of Delaware are the County of New Castle and the City of Wilmington. The name of the registered agent of the Corporation is The Corporation Trust Company. The street and number of said principal office and the address by street and number of said registered agent is No. 1209 Orange Street, in the City of Wilmington, State of Delaware.

THIRD: The nature of the business of the Corporation and the objects or purposes to be transacted, promoted or carried on by it are as follows:

1. To make, manufacture, produce, prepare, process, purchase or otherwise acquire, and to hold, use, sell, import, export or otherwise trade or deal in and with goods, wares, products, merchandise, machines, machinery, appliances and apparatus, of every kind, nature and description, and, in general, to engage or participate in any manufacturing or other business of any kind or character whatsoever, including, but not by way of limitation, importing, exporting, mining, quarrying, producing, farming, agriculture, forestry, construction, management, advisory, mercantile, financial or investment business, any business engaged in rendering any manner of services and any business of buying, selling, leasing or dealing in properties of any and all kinds, whether any such business is located in the United States of America or any foreign country, and whether or not related to, conducive to, incidental to, or in any way connected with, the foregoing business.

2. To engage in research, exploration, laboratory and development work relating to any material, substance, compound or mixture now known or which may hereafter be known, discovered or

developed and to perfect, develop, manufacture, use, apply and generally to deal in and with any such material, substance, compound or mixture.

3. To purchase, lease or otherwise acquire, to hold, own, use, develop, maintain, manage and operate, to sell, transfer, lease, assign, convey, exchange or otherwise turn to account or dispose of, and generally, to deal in and with, personal and real property, tangible or intangible, of every kind and description, wheresoever situated, and any and all rights, concessions, interests and privileges therein.

4. To adopt, apply for, obtain, register, purchase, lease or otherwise acquire, to maintain, protect, hold, use, own, exercise, develop, manufacture under, operate and introduce and to sell and grant licenses or other rights in respect of, assign or otherwise dispose of, turn to account, or in any manner deal with and contract with reference to, any trademarks, trade names, patents, patent rights, concessions, franchises, designs, copyrights and distinctive marks and rights analogous thereto and inventions, devices, improvements, processes, recipes, formulae and the like, including, but not by way of limitation, such thereof as may be covered by, used in connection with, or secured or received under, Letters Patent of the United States of America or elsewhere, and any licenses and rights in respect thereof, in connection therewith or appertaining thereto.

5. To purchase or otherwise acquire and to hold, pledge, sell, exchange or otherwise dispose of securities (which term includes any shares of stock, bonds, debentures, notes, mortgages or other obligations and any certificates, receipts or other instruments representing rights to receive, purchase or subscribe for the same or representing any other rights or interests therein or in any property or assets) created or issued by any person, firm, association, corporation (including, to the extent permitted by the laws of the State of Delaware, the Corporation) or government or subdivision, agency or instrumentality thereof; to make payment therefor in any lawful manner; and to exercise, as owner or holder thereof, any and all rights, powers and privileges in respect thereof (to the extent aforesaid).

6. To make, enter into, perform and carry out contracts of every kind and description with any person, firm, association, corporation or government or subdivision, agency or instrumentality thereof; to endorse or guarantee the payment of principal, interest or dividends upon, and to guarantee the performance of sinking fund or other obligations of, any securities or the payment of a certain amount per share in liquidation of the capital stock of any other corporation; and to guarantee in any way permitted by law the performance of any of the contracts or other undertakings of any person, firm, association, corporation or government or subdivision, agency or instrumentality thereof.

7. To acquire by purchase, exchange or otherwise, all, or any part of, or any interest in, the properties, assets, business and good will of any one or more persons, firms, associations or corporations heretofore or hereafter engaged in any business whatsoever; to pay for the same in cash, property or its own or other securities; to hold, operate, lease, reorganize, liquidate, sell or in any manner dispose of the whole or any part thereof; to assume or guarantee, in connection therewith, the performance of any liabilities, obligations or contracts of such persons, firms, associations or corporations; and to conduct the whole or any part of any business thus acquired.

8. To lend its uninvested funds from time to time to such extent, to such persons, firms, associations, corporations or governments or subdivisions, agencies or instrumentalities thereof, and on such terms and on such security, if any, as the Board of Directors of the Corporation (hereinafter called the "Board of Directors") may determine.

9. To borrow money for any of the purposes of the Corporation, from time to time, and without limit as to amount; to issue and sell from time to time, its own securities in such amounts, on such terms and conditions, for such purposes and for such consideration, as may now be or hereafter shall be permitted by the laws of the State of Delaware; and to secure such securities by mortgage upon, or the pledge of, or the conveyance or assignment in trust of, the whole or any part of the properties, assets, business and good will of the Corporation then owned or thereafter acquired.

10. To promote, organize, manage, aid or assist, financially or otherwise, persons, firms, associations or corporations engaged in any business whatsoever; and to assume or underwrite the performance of all or any of their obligations.

11. To organize or cause to be organized under the laws of the State of Delaware, any other state or states of the United States of America, the District of Columbia, any territory, dependency, colony or possession of the United States of America or of any foreign country, a corporation or corporations for the purpose of transacting, promoting or carrying on any or all objects or purposes for which the Corporation is organized; to dissolve, wind up, liquidate, merge or consolidate any such corporation or corporations or to cause the same to be dissolved, wound up, liquidated, merged or consolidated; and, subject to the laws of the State of Delaware, to consolidate or merge with or into one or more other corporations organized under the laws of the State of Delaware or under the laws of any other state or states in the United States of America, the District of Columbia, any territory, dependency, colony or possession of the United States of America or of any foreign country if the laws under which said other corporation or corporations are formed shall permit such consolidation or merger.

12. To conduct its business in any and all of its branches and maintain offices both within and without the State of Delaware in any and all states of the United States of America, in the District of Columbia, in any or all territories, dependencies, colonies or possessions of the United States of America and in foreign countries.

13. To such extent as a business corporation organized under the laws of the State of Delaware may now or hereafter lawfully do, to do, either as principal or agent and either alone or through subsidiaries or in connection with other persons, firms, associations or corporations, all and everything necessary, suitable, convenient or proper for, or in connection with, or incident to, the accomplishment of any of the purposes or the attainment of any one or more of the objects herein enumerated or designed directly or indirectly to promote the interests of the Corporation or to enhance the value of its properties; and in general to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware and to do any and all things and exercise any and all powers, rights and privileges which a business corporation may now or hereafter be organized or authorized to do or to exercise under the laws of the State of Delaware.

14. Whenever the context permits, the following provisions shall govern the construction of the paragraphs of these purposes; no specified enumeration shall be construed as restricting in any way any general language; any word, whether in the singular or plural shall be construed to mean both the singular and the plural; any phrase in the conjunctive or in the disjunctive shall include both the conjunctive and disjunctive; the mention of the whole shall include any part or parts; any one or more or all of the purposes set forth may be pursued from time to time and whenever deemed desirable; verbs in the present or future tense shall be construed to include both the present and future tenses or either of them.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is 265,000,000 of which 15,000,000 shares, without par value, are to be of a class designated "Preferred Stock" and 250,000,000 shares of the par value of \$.125 each are to be of a class designated "Common Stock".

The voting powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of the classes of stock of the Corporation which are fixed by this Certificate of Incorporation, and the authority vested in the Board of Directors to fix by resolution or resolutions providing for the issue of Preferred Stock the voting powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of the shares of Preferred Stock which are not fixed by this Certificate of Incorporation are as follows:

(a) The Preferred Stock may be issued from time to time in one or more series of any number of shares; provided that the aggregate number of shares issued and not canceled of any and all such series shall not exceed the total number of shares of Preferred Stock hereinabove authorized. Each series of Preferred Stock shall be distinctively designated by letter or descriptive words. All series of Preferred Stock shall rank equally and be identical in all respects except as permitted by the provisions of paragraphs (b) and (f) of this Article FOURTH.

(b) Authority is hereby vested in the Board of Directors from time to time to issue the Preferred Stock as Preferred Stock of any series and in connection with the creation of each such series to fix by resolution or resolutions providing for the issue of shares thereof the voting powers, if any, the designation, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of such series to the full extent now or hereafter permitted by this Certificate of Incorporation and the laws of the State of Delaware, in respect of the matters set forth in the following subparagraphs (1) to (8), inclusive:

(1) The distinctive designation of such series and the number of shares which shall constitute such series, which number may be increased or decreased (but not below the number of shares thereof then outstanding) from time to time by action of the Board of Directors;

(2) The dividend rate of such series, any preferences to or provisions in relation to the dividends payable on any other class or classes or of any other series of stock, and any limitations, restrictions or conditions on the payment of dividends;

(3) The price or prices at which, and the terms and conditions on which, the shares of such series may be redeemed by the Corporation;

(4) The amount or amounts payable upon the shares of such series in the event of any liquidation, dissolution or winding up of the Corporation;

(5) Whether or not the shares of such series shall be entitled to the benefit of a sinking fund to be applied to the purchase or redemption of shares of such series and, if so entitled, the amount of such fund and the manner of its application;

(6) Whether or not the shares of such series shall be made convertible into, or exchangeable for, shares of any other class or classes of stock of the Corporation or shares of any other series of Preferred Stock, and, if made so convertible or exchangeable, the conversion price or prices, or the rate or rates of exchange, and the adjustments thereof, if any, at which such conversion or exchange may be made, and any other terms and conditions of such conversion or exchange;

(7) Whether or not the shares of such series shall have any voting powers and, if voting powers are so granted, the extent of such voting powers; and

(8) Whether or not the issue of any additional shares of such series or of any future series in addition to such series shall be subject to restrictions in addition to the restrictions, if any, on the issue of additional shares imposed in the resolution or resolutions fixing the terms of and outstanding series of Preferred Stock theretofore issued pursuant to this Article FOURTH and, if subject to additional restrictions, the extent of such additional restrictions.

(c) The holders of Preferred Stock of each series shall be entitled to receive, when and as declared by the Board of Directors, dividends in cash at the rate for such series fixed by the Board of Directors as provided in paragraph (b) of this Article FOURTH, and no more, payable quarterly on the first days of January, April, July and October or of such other months as may be designated by the Board of Directors (each of the quarterly periods ending on the first day of January, April, July and October in each year, or on the first days of such other months, respectively, being hereinafter called a dividend period), in each case from the date of cumulation (as defined in paragraph (h) of this Article FOURTH) of such series. Except as may otherwise be provided in the resolution or resolutions providing for the issue of any given series of Preferred Stock, dividends on Preferred Stock shall be cumulative (whether or not there shall be net profits or net assets of the Corporation legally available for the payment of such dividends), so that, if at any time full cumulative dividends (as defined in paragraph (h) of this Article FOURTH) upon the Preferred Stock of all series to the end of the last completed dividend period shall not have been paid or declared and a sum sufficient for payment thereof set apart, the amount of the deficiency shall be fully paid, but without interest, or dividends in such amount shall have been declared on each such series and a sum sufficient for the payment thereof shall have been set apart for such

payment, before any sum or sums shall be set aside for or applied to the purchase or redemption of Preferred Stock of any series (either pursuant to any applicable sinking fund provisions or any redemptions authorized pursuant to paragraph (g) of this Article FOURTH or otherwise) or set aside for or applied to the purchase of Common Stock and before any dividend shall be declared or paid or any other distribution ordered or made upon the Common Stock (other than a dividend payable in Common Stock); *provided, however*, that any moneys deposited in the sinking fund provided for any series of Preferred Stock in the resolution or resolutions providing for the issue of shares of said series, in compliance with the provisions of such sinking fund and of this paragraph (c), may thereafter be applied to the purchase or redemption of Preferred Stock in accordance with the terms of such sinking fund whether or not at the time of such application full cumulative dividends upon the outstanding Preferred Stock of all series to the end of the last completed dividend period shall have been paid or declared and set apart for payment. All dividends declared upon the Preferred Stock of the respective series outstanding shall be declared *pro rata*, so that the amounts of dividends declared per share on the Preferred Stock of different series shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of such respective series bear to each other.

(d) Before any sum or sums shall be set aside for or applied to the purchase of Common Stock and before any dividends shall be declared or paid or any distribution ordered or made upon the Common Stock (other than a dividend payable in Common Stock), the Corporation shall comply with the sinking fund provisions, if any, of any resolution or resolutions providing for the issue of any series of Preferred Stock any shares of which shall at the time be outstanding.

(e) Subject to the provisions of paragraphs (c) and (d) of this Article FOURTH, the holders of Common Stock shall be entitled, to the exclusion of the holders of Preferred Stock of any and all series, to receive such dividends as from time to time may be declared by the Board of Directors.

(f) In the event of any liquidation, dissolution or winding up of the Corporation, the holders of Preferred Stock of each series then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, whether from capital, surplus or earnings, before any payment shall be made to the holders of Common Stock, an amount determined as provided in paragraph (b) of this Article FOURTH for every share of their holdings of Preferred Stock of such series. If upon any liquidation, dissolution or winding up of the Corporation the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of Preferred Stock of all series the full account to which they respectively shall be entitled, the holders of Preferred Stock of all series shall share ratably in any distribution of assets according to the respective amounts which would be payable in respect of the shares of Preferred Stock held by them upon such distribution if all amounts payable on or with respect to Preferred Stock of all series were paid in full. In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, after payment shall have been made to the holders of Preferred Stock of the full amount to which they shall be entitled as aforesaid, the holders of Common Stock shall be entitled, to the exclusion of the holders of Preferred Stock of any and all series, to share, ratably according to the number of shares of Common Stock held by them, in all remaining assets of the Corporation available for distribution to its stockholders. Neither the merger or consolidation of the Corporation into or with another corporation nor the merger or consolidation of any other corporation into or with the Corporation, nor the sale, transfer or lease of all or substantially all the assets of the Corporation, shall be deemed to be a liquidation, dissolution or winding up of the Corporation. Notwithstanding the foregoing provisions of this paragraph (f), it may be provided as to any one or more series of Preferred Stock that upon liquidation, dissolution or winding up of the Corporation the shares of such series shall not have any preference, other than to be paid out of the assets of the Corporation available for distribution to its stockholders, an amount equal to accrued dividends [as defined in paragraph (h) hereof] and thereafter to share ratably with the holders of Common Stock (and any other class or series having a similar right) in all distributions of assets as they would have shared if all of the shares of such series had been converted into

Common Stock immediately before such distribution or to share, in such event, upon such other terms and conditions as may be provided.

(g) Subject to any requirements which may be applicable to the redemption of any given series of Preferred Stock as provided in any resolution or resolutions providing for the issue of such series of Preferred Stock, the Preferred Stock of all series, or of any series thereof, or any part of any series thereof, at any time outstanding, may be redeemed by the Corporation, at its election expressed by resolution of the Board of Directors, at any time or from time to time, upon not less than 30 days, but not more than 90 days, previous notice to the holders of record of Preferred Stock to be redeemed, given by mail in such manner as may be prescribed by resolution or resolutions of the Board of Directors:

(1) if such redemption shall be otherwise than by the application of moneys in any sinking fund referred to in paragraph (d) of this Article FOURTH, at the redemption price, fixed as provided in paragraph (b) of this Article FOURTH, at which shares of Preferred Stock of the particular series may then be redeemed at the option of the Corporation and

(2) if such redemption shall be by the application of moneys in any sinking fund referred to in paragraph (d) of this Article FOURTH, at the redemption price, fixed as provided in paragraph (b) of this Article FOURTH, at which shares of Preferred Stock of the particular series may then be redeemed for such sinking fund;

provided, however, that, before any Preferred Stock of any series shall be redeemed at said redemption price thereof specified in clause (1) of this paragraph (g), all moneys at the time in the sinking fund, if any, for Preferred Stock of that series shall first be applied, as nearly as may be, to the purchase or redemption of Preferred Stock of that series as provided in the resolution or resolutions of the Board of Directors providing for such sinking fund. If less than all the outstanding shares of Preferred Stock of any series are to be redeemed, the redemption may be made either by lot or *pro rata* in such manner as may be prescribed by resolution of the Board of Directors. The Corporation may, if it shall so elect, provide moneys for the payment of the redemption price by depositing the amount thereof for the account of the holders of Preferred Stock entitled thereto with a bank or trust company doing business in the City of New York, in the State of New York, and having capital and surplus of at least \$5,000,000. The date upon which such deposit may be made by the Corporation (hereinafter called the "date of deposit") shall be prior to the date fixed as the date of redemption. In any such case there shall be included in the notice of redemption a statement of the date of deposit and of the name and address of the bank or trust company with which the deposit has been or will be made. On and after the date fixed in any such notice of redemption as the date of redemption (unless default shall be made by the Corporation in providing moneys for the payment of the redemption price pursuant to such notice) or, if the Corporation shall have made such deposit on or before the date specified therefor in the notice, then on and after the date of deposit all rights of the holders of the Preferred Stock to be redeemed as stockholders of the Corporation, except the right to receive the redemption price as hereinafter provided and, in the case of such deposit, any conversion rights not theretofore expired, shall cease and terminate. Such conversion rights, however, in any event shall cease and terminate upon the date fixed for redemption or upon any earlier date fixed by the Board of Directors pursuant to paragraph (b) of this Article FOURTH for termination of such conversion rights. Anything herein contained to the contrary notwithstanding, said redemption price shall include an amount equal to accrued dividends on the Preferred Stock to be redeemed to the date fixed for the redemption thereof and the Corporation shall not be required to declare or pay on such Preferred Stock to be redeemed, and the holders thereof shall not be entitled to receive, any dividends in addition to those thus included in the redemption price; *provided, however*, that the Corporation may pay in regular course any dividends thus included in the redemption price either to the holders of record on the record date fixed for the determination of stockholders entitled to receive such dividend (in which event, anything herein to the contrary notwithstanding, the amount so deposited need not include any dividends so paid or to be paid) or as a part of the redemption price upon surrender of the certificates for the shares redeemed. At any time on or after the date fixed as aforesaid for such redemption or, if the Corporation shall elect to deposit

the moneys for such redemption as herein provided, then at any time on or after the date of deposit and without awaiting the date fixed as aforesaid for such redemption, the respective holders of record of the Preferred Stock to be redeemed shall be entitled to receive the redemption price upon actual delivery to the Corporation, or, in the event of such deposit, to the bank or trust company with which such deposit shall be made, of certificates for the shares to be redeemed, such certificates, if required, to be properly stamped for transfer and duly endorsed in blank or accompanied by proper instruments of assignment and transfer thereof duly executed in blank. Any moneys so deposited which shall remain unclaimed by the holders of such Preferred Stock at the end of six years after the redemption date shall be paid by such bank or trust company to the Corporation and any interest accrued on moneys so deposited shall belong to the Corporation and shall be paid to it from time to time. Preferred Stock redeemed pursuant to the provisions of this paragraph (g) shall be canceled and shall thereafter have the status of authorized and unissued shares of Preferred Stock.

(h) The term "date of cumulation" as used with reference to any series of Preferred Stock shall be deemed to mean the date fixed by the Board of Directors as the date of cumulation of such series at the time of the creation thereof or, if no date shall have been so fixed, the date on which shares of such series are first issued. Whenever used with reference to any share of any series of Preferred Stock, the term "full cumulative dividends" shall be deemed to mean (whether or not in any dividend period, or any part thereof, in respect of which such term is used there shall have been net profits or net assets of the Corporation legally available for the payment of such dividends) that amount which shall be equal to dividends at the full rate fixed for such series as provided in paragraph (b) of this Article FOURTH for the period of time elapsed from the date of cumulation of such series to the date as of which full cumulative dividends are to be computed (including an amount equal to the dividend at such rate for any fraction of a dividend period included in such period of time); and the term "accrued dividends" shall be deemed to mean full cumulative dividends to the date as of which accrued dividends are to be computed, less the amount of all dividends paid, or deemed paid as hereinafter in this paragraph (h) provided, upon said share. In the event of the issue of additional shares of Preferred Stock of any series after the original issue of shares of Preferred Stock of such series, all dividends paid or accrued on Preferred Stock of such series prior to the date of issue of such additional Preferred Stock and all dividends declared and payable to holders of Preferred Stock of such series of record on any date prior to the issue of any such additional Preferred Stock shall be deemed to have been paid on the additional Preferred Stock so issued.

(i) No holder of stock of any class of the Corporation, whether now or hereafter authorized, shall have any preemptive, preferential or other rights to subscribe for or purchase or acquire any shares of any class or any other securities of the Corporation, whether now or hereafter authorized, and whether or not convertible into, or evidencing or carrying the right to purchase, shares of any class or any other securities now or hereafter authorized, and whether the same shall be issued for cash, services or property, or by way of dividend or otherwise.

(j) Subject to the provisions of this Certificate of Incorporation and except as otherwise provided by law, the shares of stock of the Corporation, regardless of class, may be issued for such consideration and for such corporate purposes as the Board of Directors may from time to time determine.

(k) Except as otherwise provided by law, or this Certificate of Incorporation or by the resolution or resolutions providing for the issue of any series of Preferred Stock, the holders of shares of Preferred Stock, as such holders, shall not have any right to vote, and are hereby specifically excluded from the right to vote, in the election of directors or for any other purpose. Except as aforesaid, the holders of Preferred Stock, as such holders, shall not be entitled to notice of any meeting of stockholders.

(l) Subject to the provisions of any applicable law, or of the By-laws of the Corporation as from time to time amended, with respect to the closing of the transfer books or the fixing of a record date for the determination of stockholders entitled to vote and except as otherwise

provided by law, or by this Certificate of Incorporation or by the resolution or resolutions providing for the issue of any series of Preferred Stock, the holders of outstanding shares of Common Stock shall exclusively possess voting power for the election of directors and for all other purposes, each holder of record of shares of Common Stock being entitled to one vote for each share of Common Stock standing in his name on the books of the Corporation.

\$2.08 CUMULATIVE CONVERTIBLE PREFERRED STOCK, SERIES A

RESOLVED that, pursuant to the authority expressly granted to and vested in the Board of Directors by the provisions of the Certificate of Incorporation of the Corporation, the Board of Directors hereby creates a series of the Preferred Stock of the Corporation to consist of 3,076,223 shares, and the Board of Directors hereby fixes the voting powers, designation, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, of the shares of such series (in addition to the designation, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, set forth in the Certificate of Incorporation which are applicable to the Preferred Stock of all series) as follows:

(1) *Designation.* The designation of said series of Preferred Stock created by this resolution shall be "\$2.08 Cumulative Convertible Preferred Stock, Series A" (hereinafter called "Series A").

(2) *Dividend Rate.* The dividend rate of the shares of Series A shall be \$2.08 per share per annum, cumulative (entitled to "full cumulative dividends", as defined in the Certificate of Incorporation) from January 1, 1968, payable quarterly on the first days of January, April, July and October in each year. Holders of shares of Series A shall not be entitled to any dividends, whether payable in cash, property or stock, in excess of the "full cumulative dividends" at said rate.

(3) *Optional Redemption.* Subject to paragraph (4) below, shares of Series A shall not be redeemable by the Corporation for any purpose until after December 31, 1972. On and after December 31, 1972, shares of Series A may be redeemed upon not less than 40 days' notice to the holders of Series A shares and otherwise on the terms and conditions specified in paragraph (g) of Article FOURTH of the Certificate of Incorporation during the following periods at the following per share redemption prices:

<u>Redemption Price</u>	<u>Period</u>
\$55	Calendar Year 1973
\$54	Calendar Year 1974
\$53	Calendar Year 1975
\$52	Calendar Year 1976
\$51	Calendar Year 1977
\$50	At all times after December 31, 1977

plus, in each case, an amount equal to "accrued dividends" (as defined in the Certificate of Incorporation). Any redemption after December 31, 1972 and prior to January 1, 1978 shall only be made as to all of the Series A shares outstanding. On and after January 1, 1978 redemption may be made as to all or any part of such shares from time to time outstanding.

(4) *Rights on Liquidation, Dissolution, Winding Up.* In the event of any liquidation, dissolution or winding up of the Corporation, the holders of shares of Series A then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders an amount equal to \$50 per share, plus an amount equal to "accrued dividends" (as defined in the Certificate of Incorporation). Notwithstanding the foregoing, in the event of any voluntary liquidation of the Corporation prior to January 1, 1978, the holders of shares of Series A shall be entitled to be paid an amount per share equal to the redemption price as set forth in paragraph 3 currently in effect at the date of such liquidation plus accrued dividends.

(5) *Sinking Fund.* Shares of Series A are not subject or entitled to the benefit of a sinking fund.

(6) *Conversion of Convertible Preferred Stock Into Common Stock.*

(a) *Conversion Right.* Shares of Series A shall be convertible at the option of the holder thereof at any time into shares of Common Stock at a conversion price of \$45.45 per share based upon a value of \$50.00 per share of Series A stock so that initially Series A shares shall be convertible at the rate of one and one tenth share (1.1) of Common Stock for each one (1) share of Series A stock. Such price of \$45.45 per Common share (based on \$50.00 per share of Series A stock), adjusted as hereinafter provided, is hereinafter referred to as the "Conversion Price". Such right of conversion shall cease and terminate, as to shares of Series A called for redemption, at the close of business on the tenth business day prior to the date fixed for redemption unless default shall be made in the payment of the redemption price. Upon conversion the Corporation shall make no payment or adjustment on account of dividends accrued or in arrears on shares of Series A surrendered for conversion; *provided, however*, that any holder who converts his shares of Series A after the record date for any quarterly dividend payment on shares of Series A but prior to such quarterly dividend payment date shall nonetheless be entitled to receive any such quarterly dividend.

The Common Stock issuable upon conversion of shares of Series A shall be Common Stock, \$.25 par value, as constituted at the date hereof, except as otherwise provided in division (E) of subparagraph (c) of this paragraph (6).

(b) *Method of Conversion.* In order to convert shares of Series A into Common Stock, the holder thereof shall surrender the certificate or certificates for such shares of Series A, duly endorsed to the Corporation or in blank, at the office of any Transfer Agent for Series A (or at such other place as may be designated by the Corporation) shall give written notice to the Corporation at said office that he elects to convert said shares of Series A, and shall state in writing therein the name or names in which he wishes the certificate or certificates for shares of Common Stock to be issued. As soon as practicable thereafter, the Corporation shall issue or deliver at said office to the person for whose account such shares of Series A were so surrendered, or to his nominee or nominees, certificates for the number of full shares of Common Stock to which he shall be entitled as aforesaid, together with a cash adjustment in respect of any fraction of a share as hereinafter provided if not convertible into a number of whole shares. Subject to the following provisions of this paragraph (6), such conversion shall be deemed to have been made as of the date of such surrender of certificates for the shares of Series A to be converted; and the person or persons entitled to receive Common Stock issuable upon the conversion of such shares of Series A shall be treated for all purposes as the record holder or holders of such Common Stock on such date.

(c) *Adjustments of Conversion Price.* The Conversion Price of shares of Series A shall be subject to adjustment from time to time as follows:

(A) If the Corporation shall sell for cash any shares of its Common Stock or any securities convertible into Common Stock (other than Excluded Stock, as defined in division (B) of this subparagraph (c)) without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to the sale of such Stock, the Conversion Price in effect immediately prior to each such sale shall forthwith (except as provided below in this division (A) and in division (K) of this subparagraph (c)) be adjusted to a price equal to a quotient obtained by dividing:

(i) an amount equal to the sum of

(x) the total number of shares of Common Stock outstanding (excluding Excluded Stock but including the shares of Common Stock deemed to have been issued pursuant to subdivision (2) of this division (A)) immediately prior to such sale multiplied by the Conversion Price in effect immediately prior to such sale, plus

(y) the consideration received by the Corporation upon such sale, plus

(z) the excess of (1) the aggregate consideration received by the Corporation upon all issuances of Common Stock after the date of first issuance of shares of Series A (other than Excluded Stock) over (2) the Conversion Price in effect at the time of the respective issuance multiplied by the number of shares so issued; *provided, however*, that such excess shall not be taken into account to the extent such excess has previously been taken into account in adjusting such Conversion Price pursuant hereto,

by

(ii) the total number of shares of Common Stock outstanding (excluding Excluded Stock but including the shares of Common Stock deemed to have been issued pursuant to subdivision (2) of this division (A)) immediately after the sale of such Common Stock;

provided, however, that such adjustment shall be made only if and to the extent that the aforesaid quotient shall be less than the Conversion Price in effect immediately prior to such sale.

For the purposes of any adjustment of the Conversion Price pursuant to this subparagraph (c), the following provision shall be applicable:

(1) In the case of the sale of Common Stock (or convertible or exchangeable securities referred to in subdivision (2) of this Division (A)), the consideration shall be deemed to be the amount of cash paid therefor without deduction for any discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(2) In the case of the sale of any securities (other than shares of Series A) by their terms convertible into or exchangeable for Common Stock:

(i) the aggregate number of shares of Common Stock initially deliverable upon conversion of or in exchange for any such convertible or exchangeable securities shall be considered to have been issued at the time such securities were issued and for a consideration equal to the consideration received by the Corporation for any such securities, plus the additional consideration, if any, to be received by the Corporation upon the conversion or exchange thereof (the consideration in each case to be determined in the same manner as provided in subdivision (1) above);

(ii) in the event that, after the sale of any such securities, (x) a change shall be made in the price or rate at which such securities which remain outstanding shall be convertible or exchangeable so that the aggregate number of shares of Common Stock thereafter deliverable shall decrease and (y) such increase in price or decrease in shares deliverable is in accordance with the provisions of such securities (other than provisions designed to protect against dilution such as this subparagraph (c)), the Conversion Price shall forthwith be readjusted to such Conversion Price as would have been obtained if such decreased number of shares had been the number of shares of Common Stock initially deliverable upon the conversion or exchange of such outstanding securities; and

(iii) on the termination of such right to convert or exchange, the Conversion Price shall forthwith be readjusted to such Conversion Price as would have been obtained had the adjustment made upon the sale of such securities been made upon the basis of the issuance or sale of only the number of shares of Common Stock actually issued upon the conversion or exchange of such securities.

(B) "Excluded Stock" shall mean:

(1) Common Stock or stock convertible into Common Stock sold pursuant to any present or future stock option plan, stock purchase plan, or other benefit plan for employees (including officers) of the Corporation or of its subsidiaries or present or future agreement to substitute

options for stock of the Corporation for existing stock options of a business acquired by or merged into or consolidated with the Corporation;

(2) Shares of Common Stock sold upon exercise of warrants issued pursuant to the terms of the Warrant Agreement, dated as of May 1, 1959, between the Corporation and Morgan Guaranty Trust Company.

(C) If the number of shares of Common Stock outstanding at any time is increased by a stock dividend payable in shares of Common Stock or by a subdivision or split-up of shares of Common Stock, then, on the day following the date fixed for the determination of holders of Common Stock entitled to receive such stock dividend, subdivision or split-up, the number of shares of Common Stock issuable on conversion of each share of Series A shall be increased in proportion to such increase in outstanding shares of Common Stock and the Conversion Price shall be correspondingly decreased.

(D) If the number of shares of Common Stock outstanding at any time is decreased by a combination of the outstanding shares of Common Stock, then, on the day following the effective date of such combination, the number of shares issuable on conversion of each share of Series A shall be decreased in proportion to such decrease in outstanding shares and the Conversion Price shall be correspondingly increased.

(E) In the case this Corporation shall be recapitalized or shall be consolidated with or merged into, or shall sell or transfer its property and assets as, or substantially as, an entirety, proper provisions shall be made as part of the terms of such recapitalization, consolidation, merger, sale or transfer whereby the holder of any shares of the Series A stock convertible into Common Stock outstanding immediately prior to such event shall thereafter be entitled to such conversion rights with respect to securities of the Corporation resulting from such recapitalization, consolidation or merger, or to which such sale or transfer shall be made, as shall be substantially equivalent to the conversion rights, if any, provided for with respect to such Series A stock; *provided, however*, that no such provisions with respect to conversion rights need be made if (i) provision is made for the redemption of such Series A stock in accordance with redemption provisions then applicable to such Series A stock, and (ii) the effect of such redemption is to terminate such conversion rights prior to such recapitalization, consolidation, merger, sale or transfer.

(F) All calculations under this paragraph (6) shall be made to the nearest cent or to the nearest one one hundredth (1/100) of a share, as the case may be.

(G) Whenever the Conversion Price shall be adjusted as in this subparagraph (c) provided, the Corporation shall forthwith file, at each office designated for the conversion of shares of Series A as provided in this paragraph (6), a statement, signed by the Chairman of the Board, President or any Vice President of the Corporation, and by its Treasurer, Assistant Treasurer, Secretary or an Assistant Secretary, showing in detail the facts requiring such adjustment and the Conversion Price that shall be in effect after such adjustment. The Corporation shall also cause a notice setting forth any such adjustment to be sent by mail, first class, postage prepaid, to each registered holder of shares of Series A at his address appearing on the stock register.

(H) Irrespective of any adjustments in the Conversion Price, certificates representing shares of Series A theretofore or thereafter issued which express the initial Conversion Price shall nevertheless be valid for all purposes.

(I) No fraction of a share of Common Stock shall be issued upon any conversion but, in lieu thereof, there shall be paid an amount in cash equal to the same fraction of the market value of a full share of Common Stock. For such purpose, the market value of a share of Common Stock shall be the last recorded sale price of such a share on the New York Stock Exchange on the day immediately preceding the date upon which such shares are surrendered for conversion or, if there be no such recorded sale price on such day, the last quoted bid price per share on the Common Stock on such Exchange on the close of trading on such date. If the Common Stock shall not at the time be dealt in on the New York Stock Exchange, such market value shall be the prevailing market value of the Common

Stock on any other securities exchange, or in the open market, as determined by this Corporation, which determination shall be conclusive.

(J) The Corporation shall at all times reserve and keep available, out of its treasury stock or authorized and unissued stock, or both, solely for the purpose of effecting the conversion of shares of Series A, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all shares of Series A from time to time outstanding.

(K) Anything in this paragraph (6) to the contrary notwithstanding, the Corporation shall not be required to make any adjustment of the Conversion Price in any case in which the amount by which such Conversion Price would be reduced in accordance with the foregoing provisions would be less than \$1.00 per share of Common Stock, but in such case any adjustment that would otherwise be required then to be made will be carried forward and made at the time and together with the next subsequent adjustment which, together with any and all such adjustments so carried forward, shall amount to \$1.00 or more per share of Common Stock. In the event of any stock dividend, subdivision, split-up or combination of shares of Common Stock, said amount of \$1.00 (as theretofore decreased or increased) shall be proportionately decreased or increased.

(L) No adjustment of the conversion rate shall be made by reason of the issuance of Common Stock or stock convertible into Common Stock in exchange for property or services. Any Common Stock or stock convertible into Common Stock issued in a tax free reorganization shall be deemed to be issued solely for property.

(7) *Voting.* Subject to the provisions of any applicable law, or of the By-laws of the Corporation as from time to time amended, with respect to the fixing of a record date for the determination of stockholders entitled to vote, at each meeting of stockholders each holder of record of shares of Series A shall be entitled to one vote per share on each matter on which the holders of record of the Common Stock shall be entitled to vote, voting together with the holders of record of the Common Stock and any other series of Preferred Stock entitled to vote with the Common Stock and not by classes, and each such record holder of shares of Series A shall be entitled to notice of any such meeting of stockholders. However, so long as any shares of Series A are outstanding, if at the time of any annual meeting of stockholders for the election of directors a default in preferred dividends (as defined in this paragraph (7)) shall exist, the holders of shares of Preferred Stock, voting separately as a class without regard to series (with each share of Preferred Stock being entitled to one vote), shall have the right to elect two members of the Board of Directors of the Corporation. The holders of Common Stock shall not be entitled to vote in the election of the two directors so to be elected by the holders of shares of Preferred Stock. Any director elected by the holders of shares of Preferred Stock, voting as a class as aforesaid, shall continue to serve as such director for the full term for which he shall have been elected notwithstanding that prior to the end of such term a default in preferred dividends shall cease to exist. If, prior to the end of the term of any director elected by the holders of the Preferred Stock, voting as a class as aforesaid, a vacancy in the office of such director shall occur by reason of death, resignation, removal or disability, or for any other cause, such vacancy shall be filled for the unexpired term in the manner provided in the By-laws of the Corporation, provided that, if such vacancy shall be filled by election by the stockholders at a meeting thereof, the right to fill such vacancy shall be vested in the holders of Preferred Stock, voting as a class as aforesaid, unless, in any such case, no default in preferred dividends shall exist at the time of such election.

For the purposes of this paragraph (7), a default in preferred dividends shall be deemed to have occurred whenever the amount of dividends in arrears upon any series of Preferred Stock shall be equivalent to six full quarter-yearly dividends or more and, having so occurred, such default in preferred dividends shall be deemed to exist thereafter until all accrued dividends on all shares of Preferred Stock then outstanding shall have been paid to the end of the last preceding quarterly dividend period. Nothing herein contained shall be deemed to prevent an amendment of the By-laws of the Corporation, in the manner therein provided, which shall increase the number of directors so as to provide as additional places on the Board of Directors either of or both the directorships to be filled

by the two directors so to be elected by the holders of the Preferred Stock or to prevent any other change in the number of directors of the Corporation.

(8) *Reacquired Shares.* Shares of Series A which have been issued and reacquired by the Corporation through redemption or purchase, or which have been converted into shares of any other class or classes of stock of the Corporation, shall upon compliance with any applicable provision of the General Corporation Law of the State of Delaware have the status of authorized and unissued shares of Preferred Stock and may be reissued as part of the Series A or as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors.

(9) *Restricted Activities.* (a) So long as any shares of Series A are outstanding,

(A) without the written consent or affirmative vote of the holders of at least two-thirds of the aggregate number of shares of Series A at the time outstanding given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, the Corporation shall not amend, alter or repeal the preferences, special rights or other powers of the Series A shares so as to affect the rights of the holders of Series A shares adversely (and the authorization and issuance of any class of stock prior to the Series A shares as to either dividends or liquidation preferences shall be deemed to affect the Series A shares adversely);

(B) without the written consent or affirmative vote of the holders of at least a majority of the aggregate number of shares of Preferred Stock at the time outstanding given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, without regard to series, the Corporation will not (i) increase the authorized amount of Preferred Stock beyond the 5,000,000 shares presently authorized or (ii) create any other class or classes of stock ranking on a parity with the Preferred Stock as to either dividends or liquidation preferences; and

(C) except as expressly set forth in division (B) of this subparagraph (a), nothing in this paragraph (9) shall be deemed to restrict the issuance of any additional shares of Series A or of any series of Preferred Stock which may be issued in the future.

(b) For the purposes of this paragraph (9) any class or classes of stock of the Corporation shall be deemed to rank,

(A) prior to the Series A shares either as to dividends or upon liquidation, if the holders of such class or classes shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in preference or priority to the holders of the Series A shares;

(B) on a parity with the Preferred Stock either as to dividends or upon liquidation, whether or not the dividend rates, dividend payment dates, or redemption or liquidation prices per share thereof be different from those of the Preferred Stock, if the holders of such class or classes of stock shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in proportion to their respective dividend rates or liquidation prices, without preference or priority one over the other as between the holders of such class or classes of stock and the holders of the Preferred Stock; and

(C) junior to the Preferred Stock either as to dividends or upon liquidation if the rights of the holders of such class or classes shall be subject or subordinate to the rights of the holders of the Preferred Stock in respect of the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be.

\$1.40 CONVERTIBLE PREFERRED DIVIDEND STOCK, SERIES B

(PREFERRED ONLY AS TO DIVIDENDS)

RESOLVED that, pursuant to the authority expressly granted to and vested in the Board of Directors by the provisions of the Certificate of Incorporation of the Corporation, the Board of Directors hereby

creates a series of the Preferred Stock of the Corporation to consist of 4,856,628 shares, and the Board of Directors hereby fixes the voting powers, designation, preferences and relative, participating option or other special rights, and the qualifications, limitations or restrictions thereof, of the shares of such series (in addition to the designation, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, set forth in the Certificate of Incorporation which are applicable to the Preferred Stock of all series) as follows:

(1) *Designation.* The designation of said series of Preferred Stock created by this resolution shall be "\$1.40 Convertible Preferred Dividend Stock, Series B (preferred only as to dividends)" (hereinafter called "Series B").

(2) *Dividend Rate.* The dividend rate of the shares of Series B shall be \$1.40 per share per annum, cumulative (entitled to "full cumulative dividends", as defined in the Certificate of Incorporation) from July 1, 1968, payable quarterly on the first days of January, April, July and October in each year. Holders of shares of Series B shall not be entitled to any dividends, whether payable in cash, property or stock, in excess of the "full cumulative dividends" at said rate.

(3) *Optional Redemption.* Subject to paragraph (4) below, shares of Series B shall not be redeemable by the Corporation for any purpose until after December 31, 1973. After December 31, 1973, shares of Series B may be redeemed upon not less than 40 days (but not more than 90 days) notice to the holders of Series B shares and otherwise on the terms and conditions specified in paragraph (g) of Article FOURTH of the Certificate of Incorporation at forty-five dollars (\$45.00) per share plus an amount equal to "accrued dividends" (as defined in the Certificate of Incorporation). After December 31, 1973, redemption may be made as to all or any part of such shares from time to time outstanding.

(4) *Rights on Liquidation, Dissolution, Winding Up.* In the event of any liquidation, dissolution or winding up of the Corporation, the holders of shares of Series B then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders an amount equal to "accrued dividends" (as defined in the Certificate of Incorporation) and thereafter to share ratably with the holders of Common Stock (and any other class or series having a similar right) in all distributions of assets as they would have shared if all of the shares of Series B outstanding on the date of distribution had been converted into Common Stock immediately before such distribution.

(5) *Sinking Fund.* Shares of Series B are not subject or entitled to the benefit of a sinking fund.

(6) *Conversion of Convertible Preferred Stock Into Common Stock.*

(a) *Conversion Right.* Shares of Series B shall be convertible at the option of the holder thereof at any time into shares of Common Stock at a conversion price of \$50.00 per share based upon a value of \$45.00 per share of Series B stock so that initially Series B shares shall be convertible at the rate of nine tenths of one share (0.9) of Common Stock for each one (1) share of Series B stock. Such price of \$50.00 per Common share (based on \$45.00 per share of Series B stock), adjusted as hereinafter provided, is hereinafter referred to as the "Conversion Price". Such right of conversion shall cease and terminate, as to shares of Series B called for redemption, at the close of business on the tenth business day prior to the date fixed for redemption, unless default shall be made in the payment of the redemption price. Upon conversion the Corporation shall make no payment or adjustment on account of dividends accrued or in arrears on shares of Series B surrendered for conversion; *provided, however, that any holder who converts his shares of Series B after the record date for any quarterly dividend payment on shares of Series B but prior to such quarterly dividend payment date shall nonetheless be entitled to receive any such quarterly dividend.*

The Common Stock issuable upon conversion of shares of Series B shall be Common Stock, \$.25 par value, as constituted at the date hereof, except as otherwise provided in division (E) of subparagraph (c) of this paragraph (6).

(b) *Method of Conversion.* In order to convert shares of Series B into Common Stock, the holder thereof shall surrender the certificate or certificates for such shares of Series B, duly endorsed to the Corporation or in blank, at the office of any Transfer Agent for Series B (or at such other place as may be designated by the Corporation); shall give written notice to the Corporation at said office that he elects to convert said shares of Series B, and shall state in writing therein the name or names in which he wishes the certificate or certificates for shares of Common Stock to be issued. As soon as practicable thereafter, the Corporation shall issue or deliver at said office to the person for whose account such shares of Series B were so surrendered, or to his nominee or nominees, certificates for the number of full shares of Common Stock to which he shall be entitled as aforesaid, together with a cash adjustment in respect of any fraction of a share as hereinafter provided if not convertible into a number of whole shares. Subject to the following provisions of this paragraph (6), such conversion shall be deemed to have been made as of the date of such surrender of certificates for the shares of Series B to be converted; and the person or persons entitled to receive Common Stock issuable upon the conversion of such shares of Series B shall be treated for all purposes as the record holder or holders of such Common Stock on such date.

(c) *Adjustments of Conversion Price.* The Conversion Price of shares of Series B shall be subject to adjustment from time to time as follows:

(A) If the Corporation shall sell for cash any shares of its Common Stock or any securities convertible into Common Stock (other than Excluded Stock, as defined in division (B) of this subparagraph (c)) without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to the sale of such Stock, the Conversion Price in effect immediately prior to each such sale shall forthwith (except as provided below in this division (A) and in division (K) of this subparagraph (c)) be adjusted to a price equal to a quotient obtained by dividing:

(i) an amount equal to the sum of

(x) the total number of shares of Common Stock outstanding (excluding Excluded Stock but including the shares of Common Stock deemed to have been issued pursuant to subdivision (2) of this division (A)) immediately prior to such sale multiplied by the Conversion Price in effect immediately prior to such sale, plus

(y) the consideration received by the Corporation upon such sale, plus

(z) the excess of (1) the aggregate consideration received by the Corporation upon all issuances of Common Stock after the date of first issuance of shares of Series B (other than Excluded Stock) over (2) the Conversion Price in effect at the time of the respective issuance multiplied by the number of shares so issued; *provided, however*, that such excess shall not be taken into account to the extent such excess has previously been taken into account in adjusting such Conversion Price pursuant hereto,

by

(ii) the total number of shares of Common Stock outstanding (excluding Excluded Stock but including the shares of Common Stock deemed to have been issued pursuant to subdivision (2) of this division (A)) immediately after the sale of such Common Stock;

provided, however, that such adjustment shall be made only if and to the extent that the aforesaid quotient shall be less than the Conversion Price in effect immediately prior to such sale.

For the purposes of any adjustment of the Conversion Price pursuant to this subparagraph (c), the following provisions shall be applicable:

(1) In the case of the sale of Common Stock (or convertible or exchangeable securities referred to in subdivision (2) of this division (A)), the consideration shall be deemed to be the amount of cash paid therefor without deduction for any discounts, commissions or other expenses allowed,

paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(2) In the case of the sale of any securities (other than shares of Series A or Series B) by their terms convertible into or exchangeable for Common Stock:

(i) the aggregate number of shares of Common Stock initially deliverable upon conversion of or in exchange for any such convertible or exchangeable securities shall be considered to have been issued at the time such securities were issued and for a consideration equal to the consideration received by the Corporation for any such securities, plus the additional consideration, if any, to be received by the Corporation upon the conversion or exchange thereof (the consideration in each case to be determined in the same manner as provided in subdivision (1), above;

(ii) in the event that, after the sale of any such securities, (x) a change shall be made in the price or rate at which such securities which remain outstanding shall be convertible or exchangeable so that the aggregate number of shares of Common Stock thereafter deliverable shall decrease and (y) such increase in price or decrease in shares deliverable is in accordance with the provisions of such securities (other than provisions designed to protect against dilution such as this subparagraph (c)), the Conversion Price shall forthwith be readjusted to such Conversion Price as would have been obtained if such decreased number of shares had been the number of shares of Common Stock initially deliverable upon the conversion or exchange of such outstanding securities; and

(iii) on the termination of such right to convert or exchange, the Conversion Price shall forthwith be readjusted to such Conversion Price as would have been obtained had the adjustment made upon the sale of such securities been made upon the basis of the issuance or sale of only the number of shares of Common Stock actually issued upon the conversion or exchange of such securities.

(B) "Excluded Stock" shall mean:

(1) Common Stock or stock convertible into Common Stock sold pursuant to any present or future stock option plan, stock purchase plan, or other benefit plan for employees (including officers) of the Corporation or of its subsidiaries or present or future agreement to substitute options for stock of the Corporation for existing stock options of a business acquired by or merged into or consolidated with the Corporation;

(2) Shares of Common Stock sold upon exercise of warrants issued pursuant to the terms of the *Warrant Agreement, dated as of May 1, 1959, between the Corporation and Morgan Guaranty Trust Company.*

(C) If the number of shares of Common Stock outstanding at any time is increased by a stock dividend payable in shares of Common Stock or by a subdivision or split-up of shares of Common Stock, then, on the day following the date fixed for the determination of holders of Common Stock entitled to receive such stock dividend, subdivision or split-up, the number of shares of Common Stock issuable on conversion of each share of Series B shall be increased in proportion to such increase in outstanding shares of Common Stock and the Conversion Price shall be correspondingly decreased.

(D) If the number of shares of Common Stock outstanding at any time is decreased by a combination of the outstanding shares of Common Stock, then, on the day following the effective date of such combination, the number of shares issuable on conversion of each share of Series B shall be decreased in proportion to such decrease in outstanding shares and the Conversion Price shall be correspondingly increased.

(E) In the case this Corporation shall be recapitalized or shall be consolidated with or merged into, or shall sell or transfer its property and assets as, or substantially as, an entirety, proper provisions shall be made as part of the terms of such recapitalization, consolidation, merger, sale or transfer whereby the holder of any shares of the Series B stock convertible into Common Stock outstanding immediately

prior to such event shall thereafter be entitled to such conversion rights with respect to securities of the Corporation resulting from such recapitalization, consolidation or merger, or to which such sale or transfer shall be made, as shall be substantially equivalent to the conversion rights provided for with respect to such Series B stock; *provided, however*, that no such provisions with respect to conversion rights need be made if (i) provision is made for the redemption of such Series B stock in accordance with redemption provisions then applicable to such Series B stock, and (ii) the effect of such redemption is to terminate such conversion rights prior to such recapitalization, consolidation, merger, sale or transfer.

(F) All calculations under this paragraph (6) shall be made to the nearest cent or to the nearest one one hundredth (1/100) of a share, as the case may be.

(G) Whenever the Conversion Price shall be adjusted as in this subparagraph (c) provided, the Corporation shall forthwith file, at each office designated for the conversion of shares of Series B as provided in this paragraph (6), a statement, signed by the Chairman of the Board, President or any Vice President of the Corporation, and by its Treasurer, Assistant Treasurer, Secretary or an Assistant Secretary, showing in detail the facts requiring such adjustment and the Conversion Price that shall be in effect after such adjustment. The Corporation shall also cause a notice setting forth any such adjustment to be sent by mail, first class, postage prepaid, to each registered holder of shares of Series B at his address appearing on the stock register.

(H) Irrespective of any adjustments in the Conversion Price, certificates representing shares of Series B theretofore or thereafter issued which express the initial Conversion Price shall nevertheless be valid for all purposes.

(I) No fraction of a share of Common Stock shall be issued upon any conversion but, in lieu thereof, there shall be paid an amount in cash equal to the same fraction of the market value of a full share of Common Stock. For such purpose, the market value of a share of Common Stock shall be the last recorded sale price of such a share on the New York Stock Exchange on the day immediately preceding the date upon which such shares are surrendered for conversion or, if there be no such recorded sale price on such day, the last quoted bid price per share on the Common Stock on such Exchange on the close of trading on such date. If the Common Stock shall not at the time be dealt in on the New York Stock Exchange, such market value shall be the prevailing market value of the Common Stock on any other securities exchange, or in the open market, as determined by this Corporation, which determination shall be conclusive.

(J) The Corporation shall at all times reserve and keep available, out of its treasury stock or authorized and unissued stock, or both, solely for the purpose of effecting the conversion of shares of Series B, such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all shares of Series B from time to time outstanding.

(K) Anything in this paragraph (6) to the contrary notwithstanding, the Corporation shall not be required to make any adjustment of the Conversion Price in any case in which the amount by which such Conversion Price would be reduced in accordance with the foregoing provisions would be less than \$1.00 per share of Common Stock, but in such case any adjustment that would otherwise be required then to be made will be carried forward and made at the time and together with the next subsequent adjustment which, together with any and all such adjustments so carried forward, shall amount to \$1.00 or more per share of Common Stock. In the event of any stock dividend, subdivision, split-up or combination of shares of Common Stock, said amount of \$1.00 (as theretofore decreased or increased) shall be proportionately decreased or increased.

(L) No adjustment of the conversion rate shall be made by reason of the issuance of Common Stock or stock convertible into Common Stock in exchange for property or services. Any Common Stock or stock convertible into Common Stock issued in a tax free reorganization shall be deemed to be issued solely for property.

(7) *Voting.* Subject to the provisions of any applicable law, or of the By-laws of the Corporation as from time to time amended, with respect to the fixing of a record date for the determination of stockholders entitled to vote, at each meeting of stockholders each holder of record of shares of Series B shall be entitled to one vote per share on each matter on which the holders of record of the Common Stock shall be entitled to vote, voting together with the holders of record of the Common Stock and any other series of Preferred Stock entitled to vote with the Common Stock and not by classes, and each such record holder of shares of Series B shall be entitled to notice of any such meeting of stockholders. However, so long as any shares of Series B are outstanding, if at the time of any annual meeting of stockholders for the election of directors a default in preferred dividends (as defined in this paragraph (7)) shall exist, the holders of shares of Preferred Stock voting separately as a class without regard to series (with each share of Preferred Stock being entitled to one vote), shall have the right to elect two members of the Board of Directors of the Corporation. The holders of Common Stock shall not be entitled to vote in the election of the two directors so to be elected by the holders of shares of Preferred Stock. Any director elected by the holders of shares of Preferred Stock, voting as a class as aforesaid, shall continue to serve as such director for the full term for which he shall have been elected notwithstanding that prior to the end of such term a default in preferred dividends shall cease to exist. If, prior to the end of the term of any director elected by the holders of the Preferred Stock, voting as a class as aforesaid, a vacancy in the office of such director shall occur by reason of death, resignation, removal or disability, or for any other cause, such vacancy shall be filled for the unexpired term in the manner provided in the By-laws of the Corporation, provided that, if such vacancy shall be filled by election by the stockholders at a meeting thereof, the right to fill such vacancy shall be vested in the holders of Preferred Stock, voting as a class as aforesaid, unless, in any such case, no default in preferred dividends shall exist at the time of such election.

For the purposes of this paragraph (7), a default in preferred dividends shall be deemed to have occurred whenever the amount of dividends in arrears upon any series of Preferred Stock shall be equivalent to six full quarter-yearly dividends or more and, having so occurred, such default in preferred dividends shall be deemed to exist thereafter until all accrued dividends on all shares of Preferred Stock then outstanding shall have been paid to the end of the last preceding quarterly dividend period. Nothing herein contained shall be deemed to prevent an amendment of the By-laws of the Corporation, in the manner therein provided, which shall increase the number of directors so as to provide as additional places on the Board of Directors either of or both the directorships to be filled by the two directors so to be elected by the holders of the Preferred Stock or to prevent any other change in the number of directors of the Corporation.

(8) *Reacquired Shares.* Shares of Series B which have been issued and reacquired by the Corporation through redemption or purchase, or which have been converted into shares of any other class or classes of stock of the Corporation, shall upon compliance with any applicable provision of the General Corporation Law of the State of Delaware have the status of authorized and unissued shares of Preferred Stock and may be reissued as part of the Series B or as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors.

(9) *Restricted Activities.* (a) So long as any shares of Series B are outstanding,

(A) without the written consent or affirmative vote of the holders of at least two-thirds of the aggregate number of shares of Series B at the time outstanding given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, the Corporation shall not amend, alter or repeal the preferences, special rights or other powers of the Series B shares so as to affect the rights of the holders of Series B shares adversely (and the authorization and issuance of any class of stock prior to the Series B shares as to dividend preference shall be deemed to affect the Series B shares adversely);

(B) without the written consent or affirmative vote of the holders of at least a majority of the aggregate number of shares of Preferred Stock at the time outstanding given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, without regard to series, the

Corporation will not (i) increase the authorized amount of Preferred Stock beyond the 15,000,000 shares presently authorized or (ii) create any other class or classes of stock ranking on a parity with the Preferred Stock as to dividend preference; and

(C) except as expressly set forth in division (B) of this subparagraph (a), nothing in this paragraph (9) shall be deemed to restrict the issuance of any additional shares of Series B or of any series of Preferred Stock which may be issued in the future.

(b) For the purposes of this paragraph (9) any class or classes of stock of the Corporation shall be deemed to rank,

(A) prior to the Series B shares as to dividends, if the holders of such class or classes shall be entitled to the receipt of dividends in preference or priority to the holders of the Series B shares;

(B) on a parity with the Series B shares as to dividends whether or not the dividend rates or dividend payment dates thereof be different from those of the Series B, if the holders of such class or classes of stock shall be entitled to the receipt of dividends in proportion to their respective dividend rates without preference or priority one over the other as between the holders of such class or classes of stock and the holders of the Series B shares; and

(C) junior to the Series B shares as to dividends if the rights of the holders of such class or classes shall be subject or subordinate to the rights of the holders of the Series B shares in respect of the receipt of dividends.

SERIES C JUNIOR PARTICIPATING PREFERRED STOCK

RESOLVED, that pursuant to the authority vested in the Board of Directors of this Corporation in accordance with the provisions of its Restated Certificate of Incorporation, a series of Preferred Stock of the Corporation be and it hereby is created, and that the designation and amount thereof and the voting powers, preferences and relative, participating, optional and other special rights of the shares of such series, and the qualifications, limitations or restrictions thereof are as follows:

(1) *Designation and Amount.* The shares of such series shall be designated as "Series C Junior Participating Preferred Stock" ("Series C Stock") and the number of shares constituting such series shall be 500,000.

(2) *Dividends and Distributions.*

(A) Subject to the prior and superior rights of the holders of any shares of any series of Preferred Stock ranking prior and superior to the shares of Series C Stock with respect to dividends, the holders of shares of Series C Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the first day of January, April, July and October in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series C Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$10.00 or (b) subject to the provision for adjustment hereinafter set forth, 100 times the aggregate per share amount of all cash dividends, and 100 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock, par value \$.25 per share, of the Corporation (the "Common Stock") since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series C Stock. In the event the Corporation shall at any time after March 8, 1986 (the "Rights Declaration Date") (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the amount to which holders of shares of Series C Stock were entitled immediately

prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on the Series C Stock as provided in paragraph (A) above immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$10.00 per share on the Series C Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Series C Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series C Stock, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series C Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series C Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series C Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be no more than 30 days prior to the date fixed for the payment thereof.

(3) *Voting Rights.* The holders of shares of Series C Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each share of Series C Stock shall entitle the holder thereof to 100 votes on all matters submitted to a vote of the stockholders of the Corporation. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the number of votes per share to which holders of shares of Series C Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein or by law, the holders of shares of Series C Stock and the holders of shares of Common Stock and any other series of Preferred Stock entitled to vote with the Common Stock shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(C) (i) If at the time of any annual meeting of stockholders for the election of directors a default in preferred dividends (as hereinafter defined) shall exist, the holders of shares of Preferred Stock voting separately as a class without regard to series (with each share of Preferred Stock being entitled to that number of votes to which it is entitled on matters submitted to stockholders generally, or, if it is not entitled to vote with respect to such matters, to one vote), shall have the right to elect two members of the Board of Directors of the Corporation. The holders of Common Stock shall not be entitled to vote in the election of the two directors so to be elected by the holders of shares of Preferred Stock. Any director elected by the holders of shares of Preferred Stock, voting as a class as aforesaid, shall continue to serve as such director for the full term for which he shall have been elected notwithstanding that prior to the end of such term a default in

preferred dividends shall cease to exist. If, prior to the end of the term of any director elected by the holders of the Preferred Stock, voting as a class as aforesaid, a vacancy in the office of such director shall occur by reason of death, resignation, removal or disability, or for any other cause, such vacancy shall be filled for the unexpired term in the manner provided in the By-laws of the Corporation, provided that, if such vacancy shall be filled by election by the stockholders at a meeting thereof, the right to fill such vacancy shall be vested in the holders of Preferred Stock, voting as a class as aforesaid, unless, in any such case, no default in preferred dividends shall exist at the time of such election.

(ii) For the purposes of paragraph (C)(i) of this Section 3, a default in preferred dividends shall be deemed to have occurred whenever the amount of dividends in arrears upon any series of Preferred Stock shall be equivalent to six full quarterly dividends or more and, having so occurred, such default in preferred dividends shall be deemed to exist thereafter until all accrued dividends on all shares of Preferred Stock then outstanding shall have been paid to the end of the last preceding quarterly dividend period. Nothing herein contained shall be deemed to prevent an amendment of the By-laws of the Corporation, in the manner therein provided, which shall increase the number of directors so as to provide as additional places on the Board of Directors either or both the directorships to be filled by the two directors so to be elected by the holders of the Preferred Stock or to prevent any other change in the number of directors of the Corporation.

(D) Except as set forth herein or required by law, holders of Series C Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

(4) *Certain Restrictions.*

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series C Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series C Stock outstanding shall have been paid in full, the Corporation shall not

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series C Stock;

(ii) declare or pay dividends on or make any other distributions on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series C Stock, except dividends paid ratably on the Series C Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series C Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series C Stock;

(iv) purchase or otherwise acquire for consideration any shares of Series C Stock, or any shares of stock ranking on a parity with the Series C Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

(5) *Reacquired Shares.* Any shares of Series C Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein.

(6) *Liquidation, Dissolution or Winding Up.* (A) Upon any liquidation (voluntary or otherwise), dissolution or winding up of the Corporation, no distribution shall be made to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series C Stock unless, prior thereto, the holders of shares of Series C Stock shall have received \$100.00 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment (the "Series C Liquidation Preference"). Following the payment of the full amount of the Series C Liquidation Preference, no additional distributions shall be made to the holders of shares of Series C Stock unless, prior thereto, the holders of shares of Common Stock (which expression shall include, for the purposes only of this Section 6, any series of the Corporation's Preferred Stock ranking on a parity with the Common Stock upon liquidation, dissolution or winding up) shall have received an amount per share (the "Common Adjustment") equal to the quotient obtained by dividing (i) the Series C Liquidation Preference by (ii) 100 (as appropriately adjusted as set forth in subparagraph C below to reflect such events as stock splits, stock dividends and recapitalizations with respect to the Common Stock) (such number in clause (ii), the "Adjustment Number"). Following the payment of the full amount of the Series C Liquidation Preference and the Common Adjustment in respect of all outstanding shares of Series C Stock and Common Stock, respectively, holders of Series C Stock and holders of shares of Common Stock shall receive their ratable and proportionate share of the remaining assets to be distributed in the ratio of the Adjustment Number to one (1) with respect to such Series C Stock and Common Stock, on a per share basis, respectively.

(B) In the event, however, that there are not sufficient assets available to permit payment in full of the Series C Liquidation Preference and the liquidation preferences of all other series of Preferred Stock, if any, which rank on a parity with the Series C Stock, then such remaining assets shall be distributed ratably to the holders of such parity shares in proportion to their respective liquidation preferences. In the event, however, that there are not sufficient assets available to permit payment in full of the Common Adjustment, then such remaining assets shall be distributed ratably to the holders of Common Stock.

(C) In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the Adjustment Number in effect immediately prior to such event shall be adjusted by multiplying such Adjustment Number by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(7) *Consolidation, Merger, etc.* In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case the shares of Series C Stock shall at the same time be similarly exchanged or changed in an amount per share (subject to the provision for adjustment hereinafter set forth) equal to 100 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into

which or for which each share of Common Stock is changed or exchanged. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series C Stock shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(8) *Redemption.* The shares of Series C Stock may be purchased by the Corporation at such times and on such terms as may be agreed to between the Corporation and the selling stockholder, subject to any limitations which may be imposed by law or this Certificate of Incorporation.

(9) *Ranking.* The Series C Stock shall rank junior to all other series of the Corporation's Preferred Stock as to the payment of dividends and the distribution of assets, unless the terms of any such series shall provide otherwise. Notwithstanding the foregoing, upon liquidation, dissolution or winding up, the Series C Stock shall rank senior in accordance with Section 6 hereof to any series of the Corporation's Preferred Stock ranking on a parity with the Common Stock upon liquidation, dissolution or winding up.

(10) *Amendment.* The Certificate of Incorporation of the Corporation shall not be amended in any manner which would materially alter or change the powers, preferences or special rights of the Series C Stock so as to affect them adversely without the affirmative vote of the holders of a majority or more of the outstanding shares of Series C Stock, voting separately as a class.

(11) *Fractional Shares.* Series C Stock may be issued in fractions of a share which shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series C Stock.

FIFTH: The Corporation is to have perpetual existence.

SIXTH: The private property of the stockholders of the Corporation shall not be subject to the payment of corporate debts to any extent whatsoever.

SEVENTH: Notwithstanding any other provisions of this Certificate of Incorporation or the By-laws of the Corporation to the contrary, no action required to be taken or which may be taken at any annual or special meeting of stockholders of the Corporation may be taken by written consent without a meeting, except:

(a) any action which may be taken solely upon the vote or consent of holders of Preferred Stock or any series thereof, or

(b) any action taken upon the signing of a consent in writing, setting forth the action so taken, by all the stockholders of the Corporation entitled to vote thereon.

EIGHTH: The Board of Directors shall have power, without stockholder action:

1. To make By-laws for the Corporation, and to amend, alter or repeal any By-laws.
2. To set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and to abolish any such reserve or reserves.

The powers and authorities herein conferred upon the Board of Directors are in furtherance and not in limitation of those conferred by the laws of the State of Delaware. In addition to the powers and authorities herein or by statute expressly conferred upon it, the Board of Directors may exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the laws of the State of Delaware, of this Certificate of Incorporation and of the By-laws of the Corporation.

NINTH: The Corporation reserves the right at any time and from time to time to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted in this Certificate of Incorporation, in the manner now or hereafter prescribed by law; and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the right reserved in this Article NINTH.

TENTH: (a) The number of directors constituting the whole Board shall be as fixed from time to time by vote of a majority of the whole Board, provided, however, that the number of directors shall not be less than three and that the number shall not be reduced so as to shorten the term of any director at the time in office. The number of directors constituting the whole Board shall hereafter be fourteen until otherwise fixed by a majority of the whole Board in accordance with the preceding sentence.

(b) The Board of Directors shall be divided into three classes, designated Class I, Class II and Class III, as nearly equal in number as the then total number of directors constituting the whole Board permits, with the term of office of one class expiring each year. At the annual meeting of stockholders in 1984, directors of Class I shall be elected to hold office for a term expiring at the next succeeding annual meeting, directors of Class II shall be elected to hold office for a term expiring at the second succeeding annual meeting, and directors of Class III shall be elected to hold office for a term expiring at the third succeeding annual meeting. At each annual meeting of stockholders the successors to the class of directors whose term shall then expire shall be elected to hold office for a term expiring at the third succeeding annual meeting. Any vacancies in the Board of Directors for any reasons, and any newly created directorships resulting from any increase in the directors, may be filled by the Board of Directors, acting by a majority of the directors then in office, or by a sole remaining director. Any directors so chosen shall hold office until the next election of the class for which such directors shall have been chosen and until their successors shall be elected and qualified, subject, however, to prior death, resignation, retirement, disqualification or removal from office. Any newly created or eliminated directorships resulting from an increase or decrease in the authorized number of directors shall be apportioned by the Board of Directors among the three classes of directors so as to maintain such classes as nearly equal as possible. Notwithstanding any other provision of this Article TENTH, and except as otherwise required by law, whenever the holders of any one or more series of Preferred Stock shall have the right, voting separately as a class, to elect one or more directors of the Corporation, the term of office, the filling of vacancies and other features of such directorships shall be governed by the terms of this Certificate of Incorporation applicable thereto.

ELEVENTH: 1. The Affirmative vote of the holders of not less than two-thirds of the outstanding shares of "Voting Stock" (as hereinafter defined) shall be required for the approval or authorization of any "Business Combination" (as hereinafter defined) of the Corporation or any subsidiary of the Corporation with any "Related Person" (as hereinafter defined), notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified by law, in any agreement with any national securities exchange or otherwise; provided, however, that the two-thirds voting requirement shall not be applicable and such Business Combination shall require only such affirmative vote as is required by law, any agreement with any national securities exchange or otherwise if:

(a) The "Continuing Directors" (as hereinafter defined) of the Corporation by at least a majority vote have expressly approved such Business Combination either in advance of or subsequent to such Related Person becoming a Related Person; or

(b) All of the following conditions are met:

(i) The cash or "Fair Market Value" (as hereinafter defined) as of the date of the consummation of the Business Combination (the "Combination Date") of the property, securities or other consideration to be received per share by holders of a particular class or

series of capital stock, as the case may be, of the Corporation in the Business Combination is not less than the highest of:

(A) the highest per share price (including brokerage commissions, transfer taxes and soliciting dealers' fees) paid by or on behalf of the Related Person in acquiring beneficial ownership of any of its holdings of such class or series of capital stock of the Corporation (i) within the two-year period immediately prior to the Combination Date or (ii) in the transaction or series of transactions in which the Related Person became a Related Person, whichever is higher; or

(B) the Fair Market Value per share of the shares of capital stock being acquired in the Business Combination (i) as at the Combination Date or (ii) the date on which the Related Person became a Related Person, whichever is higher; or

(C) in the case of Common Stock, the per share book value of the Common Stock as reported at the end of the fiscal quarter immediately prior to the Combination Date, and in the case of Preferred Stock, the highest preferential amount per share to which the holders of shares of such class or series of Preferred Stock would be entitled in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, regardless of whether the Business Combination to be consummated constitutes such an event.

The provisions of this paragraph 1(b)(i) shall be required to be met with respect to every class or series of outstanding capital stock, whether or not the Related Person has previously acquired any shares of a particular class or series of capital stock. In all above instances, appropriate adjustments shall be made for recapitalizations and for stock dividends, stock splits and like distributions; and

(ii) The consideration to be received by holders of a particular class or series of capital stock shall be in cash or in the same form as previously has been paid by or on behalf of the Related Person in connection with its direct or indirect acquisition of beneficial ownership of shares of such class or series of stock. If the consideration so paid for any such share varies as to form, the form of consideration for such shares shall be either cash or the form used to acquire beneficial ownership of the largest number of shares of such class or series of capital stock previously acquired by the Related Person.

2. For purposes of this Article ELEVENTH:

(a) The term "Business Combination" shall mean any (i) merger or consolidation of the Corporation or a subsidiary of the Corporation with a Related Person or any other corporation which is or after such merger or consolidation would be an "Affiliate" or "Associate" (as hereinafter defined) of a Related Person, (ii) sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) with any Related Person or any affiliate of any Related Person, of all or any "Substantial Part" (as hereinafter defined) of the assets of the Corporation or of a subsidiary of the Corporation to a Related Person or any Affiliate or Associate of any Related Person, (iii) adoption of any plan or proposal for the liquidation or dissolution of the Corporation proposed by or on behalf of a Related Person or any Affiliate or Associate of any Related Person, (iv) sale, lease, exchange or other disposition, including without limitation a mortgage or other security device, of all or any Substantial Part of the assets of a Related Person or any Affiliate or Associate of any Related Person to the Corporation or a subsidiary of the Corporation, (v) issuance or pledge of securities of the Corporation or a subsidiary of the Corporation to or with a Related Person or any Affiliate or Associate of any Related Person, (vi) reclassification of securities (including any reverse stock split) or recapitalization of the Corporation or any other transaction that would have the effect, either directly or indirectly, of increasing the proportionate share of any class of equity or convertible securities of the Corporation or any subsidiary of the Corporation which is directly or indirectly beneficially

owned by any Related Person or any Affiliate or Associate of any Related Person, and (vii) agreement, contract or other arrangement providing for any of the transactions described in this definition of Business Combination.

(b) The term "person" shall mean any individual, firm, corporation or other entity and shall include any group comprised of any person and any other person with whom such person or any Affiliate or Associate of such person has any agreement, arrangement or understanding, directly or indirectly, *for the purpose of acquiring, holding, voting or disposing of Voting Stock of the Corporation.*

(c) The term "Related Person" shall mean any person (other than the Corporation, or any Subsidiary and other than any profit-sharing, employee stock ownership or other employee benefit plan of the Corporation or any Subsidiary or any trustee of or fiduciary with respect to any such plan when acting in such capacity) who or which:

(i) is the beneficial owner (as hereinafter defined) of ten percent (10%) or more of the Voting Stock;

(ii) is an Affiliate or Associate of the Corporation and at any time within the two-year period immediately prior to the date in question was the beneficial owner of ten percent (10%) or more of the Voting Stock; or

(iii) is at such time an assignee of or has otherwise succeeded to the beneficial ownership of any shares of Voting Stock which were at any time within the two-year period immediately prior to such time beneficially owned by any Related Person, if such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933.

(d) A person shall be a "beneficial owner" of any Voting Stock:

(i) which such person or any of its Affiliates or Associates beneficially owns, directly or indirectly;

(ii) which such person or any of its Affiliates or Associates has, directly or indirectly, (a) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (b) the right to vote pursuant to any agreement, arrangement or understanding; or

(iii) which are beneficially owned, directly or indirectly, by any other person with which such person or any of its Affiliates or Associates has any agreement, arrangement or understanding *for the purpose of acquiring, holding, voting or disposing of any shares of Voting Stock.*

(e) For the purposes of determining whether a person is a Related Person pursuant to subparagraph (c) of this paragraph 2, the number of shares of Voting Stock deemed to be outstanding shall include shares deemed owned through application of subparagraph (d) of this paragraph 2 but shall not include any other shares of Voting Stock which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(f) The terms "Affiliate" or "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on January 1, 1984.

(g) The term "Subsidiary" means any corporation of which a majority of any class of equity security is owned, directly or indirectly, by the Corporation; *provided, however,* that for the purposes of the definition of Related Person set forth in subparagraph (c) of this paragraph 2, the term "Subsidiary" shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by the Corporation.

(h) The term "Continuing Director" means any member of the Board of Directors, while such person is a member of the Board of Directors, who is not an Affiliate, Associate or a representative of the Related Person and was a member of the Board of Directors prior to the time that the Related Person became a Related Person, and any successor of a Continuing Director, while such successor is a member of the Board of Directors, who is not an Affiliate, Associate or a representative of the Related Person and is recommended or elected to succeed a Continuing Director by a majority of Continuing Directors.

(i) The term "Substantial Part" shall mean more than twenty percent (20%) of the Fair Market Value, as determined by a majority of the Continuing Directors, of the total consolidated assets of the Corporation and its Subsidiaries taken as a whole as of the end of its most recent fiscal year ended prior to the time the determination is being made.

(j) For the purposes of paragraph 1(b)(i) of this Article ELEVENTH, the term "other consideration to be received" shall include, without limitation, capital stock retained by the stockholders.

(k) The term "Voting Stock" shall mean all of the outstanding shares of Common Stock and the outstanding shares of Preferred Stock entitled to vote on each matter on which the holders of record of Common Stock shall be entitled to vote, and each reference to a proportion of shares of Voting Stock shall refer to such proportion of the votes entitled to be cast by such shares voting as one class.

(l) The term "Fair Market Value" means: (i) in the case of stock, the highest closing sale price during the 30-day period immediately preceding the date in question of a share of such stock on the Composite Tape for the New York Stock Exchange — Listed Stocks, or, if such stock is not quoted on the Composite Tape, on the New York Stock Exchange, or, if such stock is not listed on such Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which such stock is listed, or, if such stock is not listed on any such stock exchange, the highest closing bid quotation with respect to a share of such stock during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any successor system then in use, or if no such quotations are available, the fair market value on the date in question of a share of such stock as determined in good faith by a majority of the Continuing Directors; and (ii) in the case of property other than cash or stock, the fair market value of such property on the date in question as determined in good faith by a majority of the Continuing Directors.

(m) A Related Person shall be deemed to have acquired a share of the Voting Stock of the Corporation at the time when such Related Person became the beneficial owner thereof. If a majority of the Continuing Directors is not able to determine the price at which a Related Person has acquired a share of Voting Stock of the Corporation, such price shall be deemed to be the Fair Market Value of the shares in question at the time when the Related Person became the beneficial owner thereof. With respect to shares owned by Affiliates, Associates or other persons whose ownership is attributed to a Related Person under the foregoing definition of Related Person, the price deemed to be paid therefor by such Related Person shall be the price paid upon the acquisition thereof by such Affiliate, Associate or other person, or, if such price is not determinable by a majority of the Continuing Directors, the Fair Market Value of the shares in question at the time when the Affiliate, Associate or other such person became the beneficial owner thereof.

3. The fact that any Business Combination complies with the provisions of paragraph 1(b) of this Article ELEVENTH shall not be construed to impose any fiduciary duty, obligation or responsibility on the Board of Directors, or any member thereof, to approve such Business Combination or recommend its adoption or approval to the stockholders of the Corporation, nor shall such compliance limit, prohibit or otherwise restrict in any manner the Board of Directors, or any member thereof, with respect to evaluations of or actions and responses taken with respect to such Business Combination.

TWELFTH: No director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director; provided, however, that

this Article TWELFTH shall not eliminate or limit the liability of a director to the extent provided by applicable law (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of Delaware (as in effect and as hereafter amended), or (iv) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law is amended after approval by the stockholders of this Article TWELFTH to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of each director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended. Neither the amendment nor repeal of this Article TWELFTH nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article TWELFTH shall eliminate or reduce the effect of this Article TWELFTH in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article TWELFTH, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

IN WITNESS WHEREOF, said TEXTRON INC. has caused this certificate to be signed and attested and the corporate seal to be hereunto affixed this 22nd day of March, 1988.

[SEAL]

THOMAS D. SOUTTER
Executive Vice President
and General Counsel

Attest:

EDWARD O. HANDY, JR.
Vice President and Secretary

CERTIFICATE

I, **Secretary of TEXTRON INC., a Delaware corporation,**
DO HEREBY CERTIFY that the foregoing is a true and correct copy of the Restated Certificate of Incorporation of said Corporation as filed in the office of the Secretary of State of the State of Delaware on March 24, 1988, and that there have been no amendments or supplements to said Restated Certificate of Incorporation to date.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Corporation
this day of , 19 .

Secretary